EXPLANATORY MEMORANDUM TO

THE CONSUMER CREDIT (EU DIRECTIVE) REGULATIONS 2010

2010 No. 1010

THE CONSUMER CREDIT (TOTAL CHARGE FOR CREDIT) REGULATIONS 2010

2010 No. 1011

THE CONSUMER CREDIT (ADVERTISEMENTS) REGULATIONS 2010

2010 No. 1012

THE CONSUMER CREDIT (DISCLOSURE OF INFORMATION) REGULATIONS 2010

2010 No. 1013

THE CONSUMER CREDIT (AGREEMENTS) REGULATIONS 2010

2010 No. 1014

1. This explanatory memorandum has been prepared by the Department for Business, Innovation & Skills and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 These Regulations implement an EU Directive on consumer credit. They enhance existing consumer rights on the provision of information before and during the life of a credit agreement. They also introduce certain new consumer rights in relation to credit agreements, such as the right to withdraw from an agreement within 14 days and the right to repay early in part at any time.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Legislative Context

4.1 These Regulations implement the 2008 EC Consumer Credit Directive,[1] which revokes the 1987 Consumer Credit Directive[2].

[1] Directive 2008/48/EC of the European Parliament and of the Council of 23 April 2008 on credit agreements for consumers and repealing Council Directive 87/102/EEC. OJ L133, Page 66, 22 May 2008.
[2] Directive 1987/102/EEC of 22 December 1986 for the approximation of the laws, regulations and administrative provisions of the Member States concerning consumer credit. OJ L042, Page 48, 12 February 1987.

4.2 The EU Directive Regulations make a number of amendments to the Consumer Credit Act 1974 (CCA 1974)[3] and associated secondary legislation. The other four sets of regulations replace existing secondary legislation made under the CCA 1974. The Consumer Credit Directive is maximum harmonisation and therefore the UK has had limited flexibility in how to implement it. Member States cannot impose different or additional requirements in those areas covered by the Directive. The UK already has a detailed consumer credit framework. Some of the Directive's requirements are new to the UK but many are already covered in whole or part by existing law. Where possible we have maintained existing requirements and made only the necessary changes to existing UK law. The key changes are outlined in section 7 of this Explanatory Memorandum.

4.3 However, certain types of credit agreements are excluded from the scope of the Consumer Credit Directive. It covers a narrower range of agreements than provided for in the CCA 1974. In order to preserve the integrity of the existing UK consumer credit framework and maintain the current consistent approach across the range of credit agreements, the UK has extended the scope of the measures implementing the Directive requirements to all agreements currently covered by the CCA 1974. There are a few exceptions to this. For the most part we are retaining the status quo for agreements secured on land (more specifically to agreements for second charge mortgages) because this area is under review[4] and it was not considered appropriate to make changes before the outcome of the review is known. For other categories of agreement that are not covered by the Directive but are covered by the CCA 1974, we have applied specific *new* requirements of the Directive on a case-by-case basis. For example, in respect of business lending agreements, we are applying all of the main provisions of the Directive on the basis that small business customers need the same kinds of protections as ordinary consumers. On the other hand, we are applying fewer of the Directive's provisions to agreements where the value of the loan is above £60,260 (the Directive's upper threshold) on the basis that these will involve loans to more sophisticated consumers who generally do not need the same level of protection. The table in Annex A provides details of which provisions of the Directive are being applied to which type of agreement outside its scope.

4.4 A Transposition Note is attached at Annex B.

4.5 DTI submitted an EM on Council doc no. 14246/04 on 30 November 2004 relating to "Amended proposal for a Directive of the European Parliament and of the Council on the harmonisation of the laws, regulations and administrative provisions of the Member States concerning credit for consumers repealing Directive 87/102/EC and modifying Directive 93/13/EC". The Commons European Scrutiny Committee considered it politically important and cleared it (Report 1, Session 05/06). The Lords Select Committee on the EU cleared it (PoS 21 Nov 2005, Report 13, Session 05/06).

4.6 DTI submitted an EM on Council doc no. 13193/05 on 1 November 2005 relating to "Modified proposal for a Directive of the European parliament and of the Council on credit agreements for consumers amending Council Directive 93/13/EC".

[3] We have obtained approval from Parliamentary Counsel for the changes to the CCA 1974.
[4] HM Treasury consultation document "Mortgage Regulation: a consultation" published 25 November 2009.

The Commons European Scrutiny Committee considered it politically important and cleared it (Report 10, Session 05/06). The Lords Select Committee on the EU cleared it by letter on 27 April 2007 (PoS 27 April 2007, Report 27, Session 06/07).

4.7 BERR submitted an EM on Council doc no. 9948/2/07 REV 2 on 12 November 2007 relating to "Common Position adopted by the Council on 20 September 2007 with a view to the adoption of a Directive of the European Parliament and of the Council on credit agreements for consumers and repealing Council Directive 87/102/EEC". The Commons European Scrutiny Committee considered it politically important and cleared it (Report 4, Session 07/08). The Lords Select Committee on the EU cleared it (PoS 7 Feb 2008, Session 07/08).

5. Territorial Extent and Application

5.1 This instrument extends to all of the United Kingdom. Although consumer credit is transferred to Northern Ireland, it has been agreed that these Regulations shall extend to Northern Ireland.

6. European Convention on Human Rights

The Minister for Further Education, Skills, Apprenticeships and Consumer Affairs, Kevin Brennan, has made the following statement regarding Human Rights:

In my view the provisions of the Consumer Credit (EU Directive) Regulations 2010/1010; The Consumer Credit (Total Charge for Credit) Regulations 2010/1011; The Consumer Credit (Advertisements) Regulations 2010/1012; The Consumer Credit (Disclosure of Information) Regulations 2010/1013; The Consumer Credit (Agreements) Regulations 2010/1014 are compatible with the Convention rights.

7. Policy background

- ***What is being done and why***

7.1 The European Commission found that there had been little growth in cross border transactions since the 1987 Consumer Credit Directive was adopted and significant barriers remained. It decided to overhaul the 1987 Directive to ensure that its provisions would allow consumers and companies to take full advantage of a single consumer credit market. The objective of the 2008 Consumer Credit Directive is therefore to provide a harmonised Community framework in order to facilitate the emergence of a well-functioning internal market in consumer credit. It aims to provide a sufficiently high and equivalent level of consumer protection across the Community to foster consumer confidence in the provision of cross border credit.

7.2 There are other barriers to increased cross border consumer credit which the Directive will not address, for example language and culture. However, the Impact Assessment indicates that the benefits of European financial market integration are such that even if only 1% of these potential benefits were realised as a result of implementing the Directive, this would generate benefits to EU consumers of around €13-39 billion.

7.3 The UK already has a long-standing and well developed consumer credit framework. In many cases the Directive therefore has required only relatively small amendments to UK consumer credit law, although it also introduces some new rights and requirements. The new rights and requirements in these Regulations are:

- A duty for lenders to provide adequate explanations to consumers about the credit on offer to enable them to decide whether it is suited to their needs and circumstances. This is in addition to the provision of written pre-contractual information. The Directive gives Member States considerable freedom to decide exactly what explanation should be given. The Regulations set out the specific matters which must be explained and require lenders to give consumers the opportunity to ask questions. In face-to-face situations certain explanations must be given orally. (Regulations 3 and 4 of the EU Directive Regulations)

- An obligation for lenders to assess the creditworthiness of consumers before concluding a credit agreement or increasing the amount of credit available under an existing agreement, including increasing the credit ceiling in the case of running account credit. Lenders can decide how to go about assessing creditworthiness, but are required to base their assessment on information obtained from the consumer where this is appropriate and from a credit reference agency where this is necessary. (Regulation 5 of the EU Directive Regulations)

- If an application for credit is declined on the basis of information from a credit reference agency, when the creditor informs the consumer that the application has been declined, he must tell the consumer that this is on the basis of information from a credit reference agency database. He must also provide contact details for the credit reference agency. (Regulation 40 of the EU Directive Regulations)

- The consumer has the right to withdraw from a credit agreement within 14 days, without giving any reason. The consumer must repay the amount borrowed and the interest accrued between drawing down the credit and repaying it. This replaces the current more limited right to cancel some types of agreements in certain circumstances. (Regulation 13 of the EU Directive Regulations)

- If a customer's debt is sold on (assigned), the creditor who buys the debt must ensure that the customer is informed of this, either by doing it himself or by arranging for the creditor who sold the debt to do it. (Regulation 36 of the EU Directive Regulations)

- There are requirements on credit intermediaries to disclose their links to creditors, to disclose and agree with the consumer any fee for the intermediary's services and to inform the creditor of any fee. (Regulation 41 of the EU Directive Regulations)

- The consumer has the right to repay an agreement early in part and to receive a reduction in the total cost of the credit as a result. This is in addition to the existing right for consumers to repay an agreement early in full. The existing legal framework for full early repayment has been retained and extended to cover partial early repayment. (Regulations 29 – 34, 59 – 62 and 77 – 84 of the EU Directive Regulations)

- The consumer has the right to terminate an open-end credit agreement at any time unless the parties have agreed that a period of notice not exceeding one month should be given. The creditor can do likewise subject to giving the consumer at least two months written notice. The creditor can also terminate or suspend the consumer's right to draw down on an open-end credit agreement provided they give objectively justified reasons for doing so. (Regulations 37-38 of the EU Directive Regulations).

7.4 In other cases, the Regulations amend or extend existing requirements:

- Advertisements that contain specific information about the cost of the credit need to provide a representative example of a credit offer. This consists of the interest rate; charges; total amount of credit; the APR and other relevant information depending on the type of credit. The Consumer Credit (Advertisements) Regulations 2004 require advertisements that contain information about the cost of the credit to display a typical APR. This is the rate (or better) that at least 66% of consumers responding to an advertisement should receive. The Consumer Credit (Advertisement) Regulations 2010 will dispense with the typical APR approach as the APR is only one part of the information that must be set out in the representative example, while the maximum harmonisation nature of the Directive would not seem to permit "representative" in this context as meaning 66% of respondents. Instead the representative APR is the one that would be provided under at least 51% of the agreements which will be entered into as a result of the advertisement.

- A consumer considering entering into a credit agreement, must be given pre-contractual information in writing. This information must be provided according to a specific format as set out in the Directive – the Standard European Consumer Credit Information (SECCI). The SECCI contains key information about the agreement such as the total amount payable under the agreement (where known); the interest rate and any charges applicable to the agreement; and rights concerning early repayment and withdrawal from the agreement. The Consumer Credit (Disclosure of Information) Regulations 2004 already provide for the consumer to be provided with similar information and these information requirements have been updated in the Consumer Credit (Disclosure of Information) Regulations 2010 in order to implement the requirements in the Directive. However, the main change is the requirement for the information to be presented in a set format.

- The consumer must also be provided with contractual information. This information largely duplicates that which will have already been provided via the SECCI (see above) but is not required to be provided in a set format. Current requirements concerning contractual information are set out in the Consumer Credit (Agreements) Regulations 1983. The Consumer Credit (Agreements) Regulations 2010 update these information requirements in order to implement the requirements in the Directive.

- Non-business unsecured overdrafts will be subject to the requirement for both pre-contractual and contractual information. However, there is sufficient flexibility to

allow an overdraft to be arranged urgently without prior written information (as is already the case in the United Kingdom) provided that any cost information is communicated at the time and is followed up in writing. (Regulation 16-17 of the EU Directive Regulations, Regulations 10-11 of the Disclosure of Information Regulations and Regulation 8 of the Agreements Regulations) Where a current account agreement allows the account holder to overdraw without a pre-arranged overdraft, information about the charges applicable must be included in the agreement. (Regulation 19 of the EU Directive Regulations)

- Where a credit agreement is used to purchase goods or services and there is a problem with those goods or services, the consumer can pursue the creditor for a remedy. The value of the goods must be at least £30,000, the credit agreement must be for £60,260 or less and the consumer must have tried to obtain satisfaction from the supplier first. This supplements existing consumer rights in section 75 of the Consumer Credit Act which give the creditor joint and several liability with the supplier where the cash price of the goods is not less than £100 and not more than £30,000. (Regulation 25 of the EU Directive Regulations)

- The total charge for credit and the APR disclosed in advertising and consumer information must be calculated in accordance with a specified formula, using standard assumptions where any element of a credit agreement has not been fixed -- for example, in the case of open-ended agreements it is to be assumed that the full amount of credit will be provided for a year and repaid in 12 equal monthly instalments. Although the formula is different to the one which already applies in the UK the result it produces is the same and the assumptions are broadly similar to existing assumptions, although they are less detailed in some cases. (Total Charge for Credit Regulations 2010).

- Where a credit agreement allows for the variation of an interest rate, notice of a variation must be provided to the consumer before the change takes effect (for overdraft agreements, only an increase in the interest rate needs to be notified in advance). If it has been agreed between the parties, where the change is due to a change to a reference rate, the information may be given periodically if that information is publicly available and also available at the premises of the creditor. Regulations 27-28 and 47-49 of the EU Directive Regulations). This is similar to the current requirements in the Consumer Credit (Notices of Variation of Agreements) Regulations 1977 which require that advance notice of changes to agreements, including changes to interest rates, must be given to the consumer. (In the case of overdrawing on a current-account without a pre-arranged overdraft, information on the cost must be updated at least annually. (Regulation 27 of the EU Directive Regulations)

7.5 There has been little public or media attention to the changes. Interest has largely been confined to those businesses that will have to comply with the changes, consumer groups and enforcement agencies.

7.6 The changes are not politically or legally important.

- ***Consolidation***

7.7 The Department for Business, Innovation & Skills has no plans to consolidate the Consumer Credit Act 1974 or the secondary legislation been amended by these Regulations.

8. Consultation outcome

8.1 A public consultation on the policy proposals for implementing the Consumer Credit Directive ran from 14 April 2009 to 10 June 2009.[5] The consultation ran for only eight weeks due to the need to allow as much time as possible to prepare the implementing regulations, although responses were accepted well beyond the deadline. Notice of the consultation was sent to a wide range of interested parties and the consultation document was placed on the Department's website. The Government response and a summary of responses to the consultation was published in December 2009[6]. A draft of the regulations was made available on the Department's website on 23 July 2009, with comments invited by 1 September 2009.

8.2 Sixty-seven responses to the policy consultation were received, largely from business but also from consumer organisations, enforcement authorities, public bodies, lawyers and academics. There were comments across the full range of the Consumer Credit Directive; these are reflected in the Government response. The areas that attracted most comment were scope, adequate explanations and creditworthiness.

8.3 The proposals on scope attracted support and opposition, but the arguments against were not sufficient to change the general approach of extending the requirements of the Directive to agreements covered by the CCA 1974 (with the exception of those secured on land). There is a strong consumer benefit in having a unified set of requirements across all types of unsecured agreements. However, some changes were made in response to comments received, for example the right of withdrawal is not being applied to any agreements above £60,260 (it had been proposed to apply it to larger loans for debt consolidation) but is being applied to small business lending up to £25,000 (no preference was expressed in the consultation document). In respect of pawn broking agreements we varied some of the pre-contractual and contractual information requirements, including that it will not be mandatory for the SECCI to be provided to existing customers of the pawn broker in question.

8.4 Responses to the Department's original proposals on the provision of adequate explanations suggested that the approach set out was too complex, would be burdensome for the industry and could lead to information overload for consumers. The approach to adequate explanations was therefore greatly modified. The list of matters to be explained has been considerably reduced to cover those matters which are regarded as essential for consumer protection.

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[5] Consultation on proposals for implementing the Consumer Credit Directive. April 2009. URN 09/876.
[6] Consultation on proposals for implementing the Consumer Credit Directive: Government Response. December 2009. URN 09/1599.

8.5 Similarly, responses to the Department's original proposals on the requirement to assess creditworthiness indicated that they would be burdensome to industry, would only benefit a small proportion of consumers and could lead to a reduction in lending to those who could afford it. Affordability is a complex issue and it was recognized that this could be better dealt with in the Irresponsible Lending guidance which OFT is, in any case, publishing in support of the prohibition on irresponsible lending in the 2006 Consumer Credit Act.

9. Guidance

9.1 The Department will be publishing a plain English guide to the changes made by these Regulations. This will be available no later than three months before the Regulations come fully into force. The Office of Fair Trading may also publish further guidance for creditors on its approach to enforcement of the Regulations.

10. Impact

10.1 These Regulations will have an impact on any business that offers credit to consumers. It is estimated that there are 3,500 – 5,000 businesses holding consumer credit licences in the UK. These businesses will have to comply with the new requirements, which will mean changes to procedures, computer systems and staff training. The impact on these businesses is a potential cost of £1085 million-1430 million over a period of ten years. This is balanced by a benefit to consumers of £1185 million- £2180 million over a period of ten years. These Regulations have no impact on charities or voluntary bodies.

10.2 These Regulations have no impact on the public sector.

10.3 An Impact Assessment is attached to this memorandum.

11. Regulating small business

11.1 The legislation applies to creditors that are small businesses.

11.2 As the Consumer Credit Directive is maximum harmonisation, we do not have flexibility to disapply the Directive's requirements to small business, or to apply them in a different way. However, enforcement agencies will take a proportionate and risk based approach to enforcing the new requirements, which may minimise the impact of the requirements on firms employing up to 20 people. Small business will also benefit from the Directive, as many of the new rights apply to credit agreements for less than £25,000 taken out by certain types of small business (eg sole traders and small partnerships).

11.3 The basis for the final decision on what action to take to assist small business was the policy consultation on the proposals for implementing the Directive. Organisations representing small business were consulted as part of this. The Directive does not cover lending to small business although the Consumer Credit Act does. Comments were specifically sought on how far the Directive's requirement should be extended to lending to small business, and in most cases the new provisions have been applied.

12. Monitoring & review

12.1 The Impact Assessment indicates that the Consumer Credit Directive alone will not bring about a fully integrated internal market for consumer credit, although even a small change could have a big impact (see paragraph 7.2 of this Explanatory Memorandum and page 4 of the Impact Assessment). However, it would be difficult to say that any changes were the result solely of the Directive and were not influenced by other factors.

12.2 The European Commission is expected to review the Directive in 2013 and if appropriate would put forward proposals to amend the Directive. The Department proposes to carry out a review of the effectiveness of the implementing legislation to a similar timescale.

13. Contact

Valerie Carpenter and Hannah Wiskin at the Department for Business, Innovation & Skills Tel: 020 7215 0225 and 020 7215 3495 or email: Valerie.Carpenter@bis.gsi.gov.uk and Hannah.Wiskin@bis.gsi.gov.uk can answer any queries regarding the instrument.

ANNEX A

CREDIT AGREEMENTS EXCLUDED FROM THE SCOPE OF THE CONSUMER CREDIT DIRECTIVE TO WHICH THE UK IS APPLYING THE REQUIREMENTS OF THE DIRECTIVE

TYPE OF AGREEMENT	DIRECTIVE PROVISIONS THAT WILL APPLY
Hire Purchase	• Advertising • Adequate explanations • Assessment of credit worthiness • Pre-contractual and contractual information • Database access • Early repayment • Assignment of rights • Assumptions for calculating the APR • Right of withdrawal
Loans Below £160	• Advertising • Adequate explanations • Assessment of credit worthiness • Pre-contractual and contractual information • Database access • Variation of interest rates • Termination of open-end agreements • Right of withdrawal • Early repayment • Assignment of rights • Credit intermediaries
Loans above £60,260	• Advertising • Assessment of credit worthiness • Pre-contractual and contractual information[7] • Database access • Variation of interest rates • Termination of open-end agreements • Early repayment • Assignment of rights • Credit intermediaries
Business lending	• Adequate explanations • Assessment of credit worthiness • Pre-contractual and contractual[8] information • Database access • Variation of interest rates • Termination of open-end agreements • Right of withdrawal • Early repayment • Assignment of rights

[7] The creditor has the choice of either complying with the requirement as amended by the Directive or continuing to comply with the requirements set out in the existing legislation

	• Credit intermediaries
Pawn broking	• Adequate explanations[9] • Advertising • Pre-contractual and contractual information[10] • Variation of interest rates • Right of withdrawal • Early repayment • Assignment of rights

[8] The creditor has the choice of either complying with the requirement as amended by the Directive or continuing to comply with the requirements set out in the existing legislation

[9] Limited requirements apply to this type of agreement

[10] The requirement to provide pre-contractual information only applies to new customers, those who have not used the pawn broker within the previous three years, or customers who request a copy of the pre-contractual information

Annex B

TRANSPOSITION NOTE

IMPLEMENTATION OF DIRECTIVE 2008/48/EC

OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 23 April 2008 on credit agreements for consumers and repealing Council Directive 87/102/EEC

The Consumer Credit (EU Directive) Regulations 2010
No. 2010/1010

The Consumer Credit (Total Charge for Credit) Regulations 2010
No. 2010/1011

The Consumer Credit (Advertisements) Regulations 2010
No. 2010/1012

The Consumer Credit (Disclosure of Information) Regulations 2010
No. 2010/1013

The Consumer Credit (Agreements) Regulations 2010
No. 2010/1014

This table has been prepared by the Department for Business, Innovation & Skills. It sets out the objective of each article of the Directive, and how it is to be implemented in the United Kingdom. The Secretary of State is responsible for implementation.

The transposition of Directive 2008/48 takes the form of amendments to the Consumer Credit Act 1974, amendments to existing secondary legislation made under the Act and other enactments and the replacement of existing regulations under the Act with new regulations.

The Directive is due to be implemented in Member States by 11 June 2010. The implementing legislation allows lenders to start complying with the new requirements from 30 April 2010, but provides a transitional period (until 31 January 2011) before which lenders must comply with the new requirements in recognition of the time needed by lenders to adopt the necessary changes.

These Regulations do more than is necessary to implement the Directive by applying some provisions to agreements which fall outside the Directive's scope. The Directive does not cover certain types of agreements which are covered by the Consumer Credit Act 1974. In order to maintain the coverage of the Consumer Credit Act, the UK has extended the Directive's requirements to the following agreements in most respects: pawn broking agreements, hire purchase agreements, agreements below £160, agreements over £60,260 and business lending below £25,000. Annex A to the Explanatory Memorandum gives further details on which provisions of the Directive are being applied to which type of agreement.

Article	**Objective of Article**	**Implementation**	**Responsibility**
2.3	Provides that only certain provisions of the Directive apply for particular types of overdraft. In effect, this provides a less onerous regime for overdrafts.	Regulation 17 of the Consumer Credit (EU Directive) Regulations 2010 amends section 74 of the Consumer Credit Act	Secretary of State
4.1	Credit advertisements that indicate an interest rate or any figures relating to the cost of the credit have to include standard information about the credit on offer. In addition, Member States whose legislation already requires the inclusion of an APR in advertisements that do not indicate an interest rate or any figures relating to the cost of the credit can continue to do so.	Regulation 4 of the Consumer Credit (Advertisements) Regulations 2010	Secretary of State
4.2	The standard information is defined as representative example made up of specific information, e.g. interest rate and charges, APR, the amount of credit.	Regulation 5 of the Consumer Credit (Advertisements) Regulations 2010	Secretary of State

Article	Objective of Article	Implementation	Responsibility
4.3	If the consumer has to also take out an ancillary service and the cost of the service is not known at the advertising stage, the advertisement must make this clear.	Regulation 8 of the Consumer Credit (Advertisements) Regulations 2010	Secretary of State
4.4	Article 4 is without prejudice to the Unfair Commercial Practices Directive (2005/29/EC)	No action necessary. EC 2005/29 was implemented by the Consumer Protection from Unfair Trading Regulations 2008.	Secretary of State
5.1	Where a consumer is considering entering into a credit agreement, the creditor must provide them with pre-contractual information by means of the Standard European Consumer Credit Information (SECCI) form set out in Annex II of the Directive.	Regulation 3 of the Consumer Credit (Disclosure of Information) Regulations 2010	Secretary of State
5.2	In the case of voice telephony communications, a limited amount of information is required to be given at the pre-contractual stage.	Regulation 4 of the Consumer Credit (Disclosure of Information) Regulations 2010	Secretary of State
5.3	Agreements concluded at a distance where the information cannot be provided before the agreement has been concluded, the SECCI must be provided with immediately after the conclusion of the agreement.	Regulation 5 of the Consumer Credit (Disclosure of Information) Regulations 2010	Secretary of State
5.4	Upon request, the consumer shall be given a copy of the draft credit agreement free of charge.	Regulation 6 of the Consumer Credit (EU Directive) Regulations 2010 inserts new section 55C into the Consumer Credit Act.	Secretary of State
5.5	If the agreement would not give rise to an immediate reduction in the amount of credit owed when the consumer makes a repayment, the pre-contractual information must include a clear and concise statement that such agreements do not provide for a guarantee of repayments of the total amount of credit, unless such a guarantee is given.	Regulation 3(6) of the Consumer Credit (Disclosure of Information) Regulations 2010	Secretary of State

Article	Objective of Article	Implementation	Responsibility
5.6	Creditors and credit intermediaries must provide adequate explanations to the consumer in order to place him in a position to assess whether the credit agreement is adapted to his needs and financial situation. The explanation should include the pre-contractual information, the essential characteristics of the product and the specific effects it may have on the consumer. Member State may adapt the explanations to the particular circumstances of the situation.	Regulation 3 of the Consumer Credit (EU Directive) Regulations 2010 inserts a new section 55A into the Consumer Credit Act.	Secretary of State
6.1-5	Before the consumer enters into a credit agreement in the form of an overdraft facility, the creditor must, except in the case of distance selling which does not enable the provision of pre-contractual information, provide the consumer with the information specified so he can compare different offers and take an informed decision on whether to conclude the agreement. The information may be provided in a standard format set out in Annex III. Where the consumer requests an overdraft with immediate effect and in the case of telephone sales, less information is required to be given before the agreement is concluded.	Regulations 10 and 11 of the Consumer Credit (Disclosure of Information) Regulations 2010.	Secretary of State
6.6	Upon request, the credit must give the consumer free of charge a copy of the draft credit agreement. This provision shall not apply if the creditor is not willing to proceed to the conclusion of the credit agreement with the consumer.	Regulation 6 of the Consumer Credit (EU Directive) Regulations 2010 inserts new section 55C into the Consumer Credit Act.	Secretary of State
6.7	If the agreement has been concluded at the consumer's request using distance communication, the creditor shall immediately after the conclusion of the credit agreement provide the contractual information.	Regulation 9 of the Consumer Credit (EU Directive) Regulations 2010 inserts new section 61B(2) into the Consumer Credit Act	Secretary of State

Article	Objective of Article	Implementation	Responsibility
7	The requirements concerning the provision of pre-contractual information do not apply to suppliers of goods and services who act as a credit intermediary only in an ancillary capacity.	No action required since in the United Kingdom the creditor is always responsible for providing pre-contractual information regardless of whether he chooses to provide it through an intermediary.	
8	Before the conclusion of a credit agreement and before significantly increasing the amount of credit available under an existing credit agreement, the creditor must assess the consumer's creditworthiness on the basis of sufficient information.	Regulation 5 of the Consumer Credit (EU Directive) Regulations 2010 inserts a new section 55B into the Consumer Credit Act.	Secretary of State
9.1	In the case of cross border credit, Member States must ensure non-discriminatory access for creditors from other Member States to the databases used for assessing creditworthiness.	No action required. Credit reference agencies must be licensed under the Consumer Credit Act. A relevant criterion concerning whether an agency may hold a licence is the practice of discrimination (section 25(2A)(d) of the Act).	
9.2 - 4	If an application for credit is rejected on the basis of consultation of a database, the consumer must be informed of this and of particulars of the database consulted with certain exceptions.	Regulation 40 of the Consumer Credit (EU Directive) Regulations 2010 inserts new section 157(A1) and (2A) into the Consumer Credit Act.	Secretary of State
10.1	All parties to a credit agreement shall receive a copy of that agreement	Regulations 8 and 9 of the Consumer Credit (EU Directive) Regulations 2010 insert new sections 61A and 61B into the Consumer Credit Act.	Secretary of State
10.2	The credit agreement shall specify in a clear and concise manner various information about the agreement.	Regulation 3 of the Consumer Credit (Agreements) Regulations 2010	Secretary of State
10.3	The consumer can request at any time during the lifetime of the agreement a copy of an amortisation statement	Regulation 26 of the Consumer Credit (EU Directive) Regulations 2010 inserts new section 77B into the Consumer Credit Act.	Secretary of State

Article	Objective of Article	Implementation	Responsibility
10.4	If the agreement would not give rise to an immediate reduction in the amount of credit owed when the consumer makes a repayment, the pre-contractual information must include a clear and concise statement that such agreements do not provide for a guarantee of repayments of the total amount of credit, unless such a guarantee is given.	Schedule 1 of the Consumer Credit (Agreements) Regulations 2010	Secretary of State
10.5	A credit agreement for overdraft facilities must include certain specified information.	Regulation 8 of the Consumer Credit (Agreements) Regulations 2010	Secretary of State
11.1	The consumer shall be informed of any changes to the borrowing rate before that change is effected. The information provided shall state the amount of payments to be made after the introduction of the new rate and the number or frequency of payments to be made if that has changed.	Regulation 27 of the Consumer Credit (EU Directive) Regulations 2010 inserts new section 78A into the Consumer Credit Act.	Secretary of State
11.2	The parties to an agreement may agree that where the change to the interest rate is due to a change to a reference rate, the information about changes to the borrowing rate may be given periodically if the information about the rate change is publicly available and also available at the premises of the creditor.	Regulation 27 of the Consumer Credit (EU Directive) Regulations 2010 inserts new section 78A into the Consumer Credit Act.	Secretary of State
12.1	Where a credit agreement covers credit in the form of an overdraft facility, the consumer shall be kept regularly informed by means of a statement of account of certain particulars.	Already largely covered by the Consumer Credit (Running-Account Credit Information) Regulations 1983. However, Regulation 63 of the Consumer Credit (EU Directive) Regulations 2010 amends the 1983 Regulations to achieve full compliance.	Secretary of State

Article	Objective of Article	Implementation	Responsibility
12.2	In addition, the consumer shall be informed of increases in the borrowing rate or in any charges payable, before the change enters into force. However, the parties may agree in the credit agreement that information concerning changes in the borrowing rate is to be given as set out in Article 12.1. This may be done where the change in the borrowing rate is caused by a change in the reference rate, the new reference rate is made publicly available and is also kept available in the premises of the creditor.	Regulation 27 of the Consumer Credit (EU Directive) Regulations 2010 introduces a new section 78A in the Consumer Credit Act and Regulation 28 makes consequential amendments to section 82 of the Consumer Credit Act	Secretary of State
13.1	The consumer or the creditor (where agreed in the credit agreement) may effect standard termination of the agreement. The consumer cannot be required to give more than one month's notice, while the creditor must provide at least two month's notice.	Regulation 38 of the Consumer Credit (EU Directive) Regulations 2010 inserts new section 98A into the Consumer Credit Act.	Secretary of State
13.2	The creditor can terminate the consumer's right to draw down on an open-end agreement provided he gives objectively justified reasons for doing so.	Regulation 38 of the Consumer Credit (EU Directive) Regulations 2010 inserts new section 98A into the Consumer Credit Act.	Secretary of State
14.1	The consumer has 14 days to withdraw from a credit agreement without giving any reason. The 14 day period begins either from the day the credit agreement is concluded, or if later, the day the consumer receives the contractual information.	Regulation 13 of the Consumer Credit (EU Directive) Regulations 2010 inserts new sections 66A(1), 66A(2), 66A(3) and 66A(7)(a) into the Consumer Credit Act.	Secretary of State
14.2	In the case of a linked credit agreement, where existing national legislation provides that funds cannot be made available to the consumer before the expiry of a specific period, Member States can provide that the 14 day period may be reduced to the specific period at the consumer's request.	Not applicable in the UK.	

Article	Objective of Article	Implementation	Responsibility
14.3(a)	To withdraw from the credit agreement, the consumer must notify the creditor in line with the information in the credit agreement	Regulation 13 of the Consumer Credit (EU Directive) Regulations 2010 inserts new sections 66A(2), 66A(4), 66A(5) and 66A(6) into the Consumer Credit Act.	Secretary of State
14.3(b)	If the consumer withdraws, he must pay the creditor the capital and the interest accrued from the date the credit was drawn down until the date the capital is repaid. The creditor is not entitled to any other compensation from the consumer except compensation for any non-returnable charges paid by the creditor to any public administrative body.	Regulation 13 of the Consumer Credit (EU Directive) Regulations 2010 inserts new sections 66A(9) and 66A(10) into the Consumer Credit Act.	Secretary of State
14.4	If the creditor, or a third party by agreement with the creditor, provides an ancillary service relating to the credit agreement, the consumer is not bound by the ancillary service contract if he withdraws from the credit agreement.	Regulation 13 of the Consumer Credit (EU Directive) Regulations 2010 inserts new sections 66A(7)(b), 66A(8) and 66A(13) into the Consumer Credit Act.	Secretary of State
14.5	If the consumer has a right of withdrawal under Article 14, similar rights in Directive 2002/65/EC and Directive 85/577/EEC regarding contacts negotiated away from business premises do not apply.	Regulation 89 of the Consumer Credit (EU Directive) Regulations 2010 amends regulation 11 of the Financial Services (Distance Marketing) Regulations 2004 by adding new paragraph (1)(h). Regulations 94 to 96 of the Consumer Credit (EU Directive) Regulations 2010 amends the Cancellation of Contracts made in a Consumer's Home or Place of Work etc. Regulations 2008 by adding new regulation (6)(1)(ca) and inserting a cross-reference to (6)(1)(ca) in regulation 6(2) and regulation 11(5).	Secretary of State

Article	Objective of Article	Implementation	Responsibility
14.6	Member States may provide that the right of withdrawal does not apply to credit agreements which are required to be concluded using a notary, provided that the consumer is guaranteed the rights under Articles 5 and 10.	Not applicable in the UK.	
14.7	Article 14 is without prejudice to any rule of national law establishing a period of time during which the performance of the contract may not begin.	Not applicable in the UK.	
15.1	Where the consumer has exercised a right of withdrawal, based on Community law, he shall no longer be bound by a linked credit agreement.	No action required. Already the case in UK law.	
15.2	Where there is a problem with the goods or services covered by a linked credit agreement, the consumer can pursue remedies against the creditor if he has failed to obtain satisfaction from the supplier. Member States can determine how those remedies are exercised.	This is mostly implemented by an existing provision in the Consumer Credit Act (section 75). Regulation 25 of the Consumer Credit (EU Directive) Regulations 2010 inserts new section 75A into the Consumer Credit Act.	Secretary of State
16.1	The consumer is entitled at any time to discharge fully or partially his obligations under a credit agreement. He is entitled to a reduction in the total cost of the credit consisting of the interest and the costs for the remaining duration of the contract.	In respect of full early repayment, this is implemented by section 94(1) and (2) of the Consumer Credit Act and the Consumer Credit (Early Settlement) Regulations 2004. In respect of partial early repayment, regulation 30 of the Consumer Credit (EU Directive) Regulations 2010 inserts new sections 94(3) to (6) into the Consumer Credit Act, and regulations 77 to 84 of the Consumer Credit (EU Directive) Regulations 2010 amend the Consumer Credit (Early Settlement) Regulations 2004, in particular adding new regulation 4A.	Secretary of State

Article	Objective of Article	Implementation	Responsibility
16.2 - 5	The creditor is entitled to fair and objectively justified compensation for possible costs directly linked to early repayment provided that the early repayment falls within a period for which the borrowing rate is fixed subject to certain conditions.	Regulation 32 of the Consumer Credit (EU Directive) Regulations 2010 inserts new section 95A into the Consumer Credit Act.	Secretary of State
17	Where the creditor's rights under a credit agreement are assigned to a third party, the debtor is entitled to: (a) plead against the assignee any defence which was available to him against the original creditor; and (b) to be notified of the assignment, except in certain circumstances.	Regulation 36 of the Consumer Credit (EU Directive) Regulations 2010 inserts new section 82A(1) into the Consumer Credit Act.	Secretary of State
18.1	Where the consumer may be allowed to overrun on a current account, the agreement must include information on the borrowing rate. The creditor must also provide the information on a regular basis.	Regulation 21 of the Consumer Credit (EU Directive) Regulations 2010 inserts new section 74A into the Consumer Credit Act.	Secretary of State
18.2	In the event of overrunning exceeding one month, the creditor must inform the consumer without delay of the overrunning, the amount involved, the borrowing rate and any penalties, charges or interest on arrears.	Regulation 22 of the Consumer Credit (EU Directive) Regulations 2010 inserts new section 74B into the Consumer Credit Act. Regulation 21 of the Consumer Credit (EU Directive) Regulations 2010 amends section 77A of the Consumer Credit Act.	Secretary of State
19.1	The annual percentage rate of charge (APR), equating on an annual basis to the present value of all commitments agreed by the creditor and the consumer, shall be calculated in accordance with the mathematical formula set out in Part I of Annex I.	Regulation 5 and the schedule to the Consumer Credit (Total Charge for Credit) Regulations 2010	Secretary of State

Article	Objective of Article	Implementation	Responsibility
19.2	To calculate the APR, the total cost of the credit to the consumer must be determined. This should not include any charges payable by the consumer for non-compliance with his commitments. Nor should it include charges other than the purchase price which, for purchases of goods or services, the consumer is obliged to pay whether the transaction is in cash or on credit. The total cost of credit must include the cost of maintaining an account, the cost of using a means of payment and other costs relating to payment transactions, unless the account is optional and the costs have been clearly and separately shown in the credit agreement.	Regulations 2, 4(1) and 4(5) of the Consumer Credit (Total Charge for Credit) Regulations 2010 Regulation 4(2)-(3) of the Consumer Credit (Total Charge for Credit) Regulations 2010	Secretary of State
19.3	The calculation of the APR must be based on the assumption that the credit agreement is to remain valid for the period agreed and that the creditor and the consumer will fulfil their obligations under the terms and by the date specified in the credit agreement.	Regulation 6(a) of the Consumer Credit (Total Charge for Credit) Regulations 2010	Secretary of State
19.4	Where a credit agreement contains clauses allowing variation in the borrowing rate and charges contained in the APR which are not quantifiable at the time of calculation, the APR should be calculated on the assumption that the borrowing rate and other charges will remain fixed in relation to the initial level and will remain applicable until the end of the credit agreement.	Regulation 6(b) of the Consumer Credit (Total Charge for Credit) Regulations 2010	Secretary of State
19.5	Where necessary, the additional assumptions set out in Annex I may be used in calculating the APR.	Regulations 6(c)-(q) of the Consumer Credit (Total Charge for Credit) Regulations 2010	Secretary of State
20	Member States shall ensure that creditors are supervised by a body or authority independent from financial institutions or regulated.	No action necessary. The UK already has in place an independent regulatory system for creditors.	

Article	Objective of Article	Implementation	Responsibility
21	Requirements on credit intermediaries to indicate or disclose certain matters.	Regulation 41 of the Consumer Credit (EU Directive) Regulations 2010 inserts new section 160A into the Consumer Credit Act.	Secretary of State

Summary: Intervention & Options

Department /Agency:	Title:	
Department for Business, Innovation & Skills	**Impact Assessment of the Consumer Credit Directive**	
Stage: Final	**Version:** 2	**Date:** March 2010

Related Publications: Consultation-stage impact assessment (http://www.bis.gov.uk/files/file50893.pdf); EU Directive (http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:133:0066:0092:EN:PDF)

Available to view or download at:

http://www.bis.gov.uk/consultations

Contact for enquiries: Philip O'Donnell **Telephone:** 020 7215 6764

What is the problem under consideration? Why is government intervention necessary?

Evidence suggests that cross-border purchase of financial services within the EU is low, due to a number of barriers for both suppliers and customers. There appears to be significant information problems on both sides of the transaction - for consumers, the quantity and quality of information they receive and how it is presented; for lenders, a lack of information on creditworthiness of customers or regulatory/legal frameworks in different countries.

The Consumer Credit Directive aims to correct these information asymmetries to improve the functioning of the EU consumer credit market.

What are the policy objectives and the intended effects?

The Commission has three main objectives for the Directive: establishing the conditions for a genuine internal market; ensuring a high level of consumer protection, and improving the clarity of EC regulation by replacing the three existing Directives on consumer credit.

The Directive aims to create a single European market for consumer credit through establishing harmonised rules in core areas applicable to the credit market of Member States. It is hoped that this will bolster consumer confidence, both at national and cross-border levels, and stimulate cross-border trade.

What policy options have been considered? Please justify any preferred option.

There are a number of articles within the Directive, some of which allow for flexibility in their implementation, and some which do not. Each of the relevant articles has been grouped into one of the following 3 categories:

1. No impact, relative to the current UK regulatory regime
2. Change to the current regulatory regime, but no scope for flexibility in implementation
3. Change to the current regulatory regime, some flexibility in implementation

The analysis will focus on the latter two categories, particularly the last of these.

When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects? The Directive will be reviewed in 2013 by the Commission; a benchmarking project has recently been completed by DG Sanco, against which the evolution of the EU consumer credit market will be measured.

Ministerial Sign-off For final proposal/implementation stage Impact Assessments:

I have read the Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) that the benefits justify the costs.

Signed by the responsible Minister:

Kevin Brennan

.....Date: 28 March 2010

Summary: Analysis & Evidence

Policy Option: **Consumer Credit Directive**	Description: **Full implementation of Consumer Credit Directive**

COSTS

ANNUAL COSTS	
One-off (Transition)	**Yrs**
£ 49.2m-176.2m	10
Average Annual Cost (excluding one-off)	
£ 132m-145.7m	

Description and scale of **key monetised costs** by 'main affected groups'

Changes under category 1 (**£1.6m one-off; £0.75m-1.1m ongoing**); changes under category 2 (**£20.1m-63.6m one-off; £3.1m-7.7m ongoing**); changes under category 3 (**£27.5m-111m one-off; £128.1m-136.9m ongoing**)

Total Cost (PV) **£ 1,185m-1,430m**

Other **key non-monetised costs** by 'main affected groups' Costs of data linkages with other credit reference agencies; costs to lenders not already covered by Lending Code regarding termination of open-ended credit agreements; additional time/costs associated with assessment of creditworthiness and adequate explanations

BENEFITS

ANNUAL BENEFITS	
One-off	**Yrs**
£ 25m-37.5m	10
Average Annual Benefit (excluding one-off)	
£ 215.9m-249.2m	

Description and scale of **key monetised benefits** by 'main affected groups'

Changes under category 2 (**£25m-37.5m one-off; £46.4m-73.7m ongoing**); changes under category 3 (**£169.5m-175.5m ongoing**)

Total Benefit (PV) **£ 1,885m-2,180m**

Other **key non-monetised benefits** by 'main affected groups' Potential benefits to UK consumers if EU lenders increase cross-border lending, possibly leading to lower prices for credit; potential benefit to UK lenders if they increase their cross-border lending and undercut other EU lenders; time saved by consumers comparing credit agreements. Admin benefits are scored separately here.

Key Assumptions/Sensitivities/Risks Consumers need to switch (or at least have a credible threat of switching) in order to realise many of the potential gains from increased competition; international suppliers must enter the UK market in order for consumers to be able to switch (or threaten to switch) to them.

Price Base Year 2009	Time Period Years 10	**Net Benefit Range** (NPV) **£ 455m-995m**	**NET BENEFIT** (NPV Best estimate) **£ 725m**

What is the geographic coverage of the policy/option?			UK	
On what date will the policy be implemented?			June 2010	
Which organisation(s) will enforce the policy?			OFT	
What is the total annual cost of enforcement for these organisations?			£ Negligible	
Does enforcement comply with Hampton principles?			Yes	
Will implementation go beyond minimum EU requirements?			Yes	
What is the value of the proposed offsetting measure per year?			£ N/A	
What is the value of changes in greenhouse gas emissions?			£ N/A	
Will the proposal have a significant impact on competition?			Yes	
Annual cost (£-£) per organisation (excluding one-off)	Micro **Unknown**	Small **Unknown**	Medium **Unknown**	Large **Unknown**
Are any of these organisations exempt?	No	No	No	No

Impact on Admin Burdens Baseline (2005 Prices) (Increase - Decrease)

Increase of	£ 1.85m-2.2m	Decrease of	£ 26.5m	**Net Impact**	**£ -24.65m to -24.3m**

Key: **Annual costs and benefits: Constant Prices** **(Net) Present Value**

Overview

1. The Consumer Credit Directive[11] was adopted by the European Parliament in January 2008, by the Council in April 2008 and was published in the European Journal in May 2008. The transposition deadline for the Directive to be transposed into national law is 11 June 2010.

2. In the 20-plus years since the adoption of the first Directive on consumer credit in 1987[12] – despite two subsequent amendments in 1990 and 1998 – the nature and usage of financial products have changed considerably. The aim of the original Directive was to harmonise consumer protection across the EU to enable consumers to carry out cross-border transactions with confidence. However, only basic standards of consumer protection were laid out in the original Directive and many Member States have enacted higher standards, leading to a diverse and over-complex regulatory environment across the EU. This is likely to inhibit the provision of unsecured credit across borders, and evidence seems to suggest that there has not been much increase in cross-border trade.

3. This new Directive aims to foster further integration of the consumer credit markets, along with a higher level of consumer protection, with a particular focus on transparency and consumer rights. The full harmonisation nature of the Directive is aimed at creating a 'level playing field' for creditors (who should not have to adapt their products to different legislations when supplying products and services cross-border) and a climate of confidence for consumers, who enjoy the same levels of protection throughout the EU as in their own Member State. It covers almost all types of consumer credit (the main exclusions being mortgages) from €200 (£160) to €75,000 (£60,260) and applies harmonised provisions while offering Member States flexibility on implementation.

4. It provides for a comprehensible set of information to be given to consumers in good time before the contract is concluded and also as part of the credit agreement. In order to enhance the comparability of different offers and to make the information better understandable, the pre-contractual information needs to be supplied in a standardised form (Standard European Consumer Credit Information) – i.e. every creditor has to use this form when marketing consumer credit in any Member State, and consumers will receive the Annual Percentage Rate of Charge (APR), a single figure which is harmonised at EU level, representing the cost of the credit.

5. In addition, the Directive also provides two essential rights for consumers: they are allowed to withdraw from the credit agreement without giving any reason within a period of 14 days after the conclusion of the contract, and they also will have the opportunity to repay their credit early at any time, while the creditor can ask for a fair and objectively-justified compensation.

6. Overall, the available evidence suggests that there is significant doubt that the Directive will achieve an appreciable increase in cross-border trade, as although it does address some of the main issues (i.e. those related to information and some regulatory practices), it does not address other key barriers (e.g. language differences).

[11] Directive 2008/48/EC, available at: **http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:133:0066:0092:EN:PDF**

[12] Directive 87/102/EEC, available at: **http://eur-lex.europa.eu/smartapi/cgi/sga_doc?smartapi!celexapi!prod!CELEXnumdoc&lg=EN&numdoc=31987L0102&model=guichett**

7. However, even changes that only make a small contribution towards increasing the integration of EU financial markets could lead to significant benefits – the *Cecchini* Report[13] estimated the potential benefits due to liberalisation of financial services to be 1.5% of EU GDP, which would amount to almost €180 billion.[14] A more recent study conducted in 2002 estimates that European financial market integration would result in EU real GDP being raised by 1.1% in the long run, private consumption up by 0.8% and total employment by 0.5%.[15] This would give a range of potential benefits of €130-180 billion.

8. Survey evidence on barriers to cross-border purchase of financial services indicates that the Directive might be expected to address 10-30% of the barriers identified by consumers[16], and around 10-20% identified by lenders.[17] On this basis, it might be expected that implementation of the Directive could generate long-run benefits to consumers across the EU of €13-39 billion (£12-35 billion) per year. If it is assumed that benefits to UK consumers are proportionate to the UK's share of the EU consumer credit market, then it might be expected that overall benefits to UK consumers would amount to approximately £3-8.7 billion.[18]

9. Some aspects of the Directive should help to reduce the incidence of consumers over-committing themselves in terms of borrowing beyond their ability to repay, whether this is through a lack of information (addressed in articles 4, 5, 10 and 11) or lack of understanding on the part of consumers (article 5.6). It has previously been estimated that the overall macroeconomic costs of over-indebtedness could be as high as 1% of GDP[19], which would be equivalent to an £14.5 billion per year, additional to those benefits of financial integration set out above.[20]

10. Whilst it is difficult to quantify some of the other costs associated with over-borrowing, such as financial distress and consequent impacts on ill health or relationship breakdown, a recent study by Legal Services Research Commission (LSRC)[21] estimated costs associated with debt problems to be in excess of £1,000 per individual. A recent report analysing levels of over-indebtedness in Britain indicates that between 10% and 15% of households could be considered to be 'over-indebted'.[22] If this number could be reduced by only 1% as a result of implementing this Directive, there could potentially be further additional one-off benefits to the economy of £25m-£37.5m.[23]

11. In addition, there may be benefits to lenders through ensuring that any borrower is creditworthy (article 8). This could lead to a reduction in bad debts to lenders, which currently represent a significant cost to the economy – latest figures show that write-offs related to unsecured debt amounted to £8.4 billion in 2009.[24] If this figure could be reduced by even 1% through the implementation of the Directive, this would lead to further additional benefits to lenders of £84m per year.

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[13] Quoted in 'The Benefits of a Working European Retail Market for Financial Services', ZEW/IEP (2002)
[14] Based on EU GDP for 2009 of €11.8 trillion (source: Eurostat)
[15] 'Quantification of the Macro-Economic Impact of integration of the EU Financial Markets', London Economics (November 2002)
[16] For example, those identifying insufficient/inaccurate information as a barrier = 25%; misleading/deceptive information = 14-19%; excessive/incomplete information = 11-30%
[17] For example, access to creditworthiness information = 20%; differences in legislation within scope of CCD = 11%
[18] Based on Datamonitor figures, which show that the UK accounted for 25% of the value of gross unsecured lending in 2008 across EU countries for which information was available (€245bn out of a total of €997bn).
[19] 'Fair, clear and competitive: The consumer credit market in the 21st century', DTI (2003)
[20] Based on UK GDP of £1,446.1 billion (source: Blue Book 2009, ONS)
[21] **http://www.lsrc.org.uk/publications/Impact.pdf**
[22] 'Over-indebtedness in Britain: Second follow-up report', BIS (2010)
[23] Based on evidence that there are 25 million households in the UK (Source: ONS Social Trends 39)
[24] Source: Bank of England

12. However, an impact assessment commissioned by industry in 2007[25] suggests that the overall impact of the Directive will be negative, with the central modelling scenario based on the following impacts in relation to unsecured credit:
    - an increase in cost of unsecured consumer credit of 0.7 percentage points, and
    - a restriction in availability of unsecured consumer credit of 2.5%

13. In terms of macroeconomic impact, the following outcomes for the UK economy were forecast, within 2 years of implementation:
    - a fall in consumer spending of around £1.4bn;
    - a decline in GDP of around £850m, and
    - restriction of credit availability for between 1m-1.7m consumers

14. BIS also commissioned a study to look at the effects of the Directive on the UK economy, which was published in May 2009.[26] Although largely qualitative, this concluded that the Directive may yield benefits to UK consumers in the short-term, as it will make it easier to compare loans and secures a right to partial early repayment, as well as a 14-day right of withdrawal. Although the size of these benefits may depend on implementation of the Directive, they expect the overall benefits to be moderate.

15. Breakdown of impact on admin burdens baseline, listed below:

Article	Net impact	Information obligation (Price WaterHouse Coopers 2005 Data)
Article 21 – obligation of credit intermediaries; may be some additional burden for those credit intermediaries who fall under the definition set out in the Directive, if they do not already supply such information to consumers. As we do not know how many consumers might choose to access credit products via a credit intermediary, it is not possible to quantify this burden.	£0	Consumer Credit (Total Charge for Credit) Regulation 1980
Article 19 – APR calculation; no additional information requirements, therefore no additional burdens	£0	Consumer Credit Act 1974
Article 14 – Right of Withdrawal; likely to reduce admin burdens due to burden no longer applicable to those types of lending within scope of Directive. Given that unsecured lending accounts for around 20% of gross unsecured lending as a whole, this burden is assumed to reduce by 20%.	-£380,000	Consumer Credit Act 1974
Article 13 – Open end agreements; no admin burden associated as article primarily concerns the right related to the timing of a notification, rather than obligation to send one.	£0	Consumer Credit Act 1974
Article 11 – Borrowing rate; unlikely to add burden as it is likely that new requirements are less onerous for lenders in fulfilling their obligations	£0	Consumer Credit (Notice of Variation of Agreements) Regulation 1977
Articles 6 and 12 – Overdrafts and Overrunning; unlikely to add to burdens as current practices already covers much of the information required here, which is now required by statute and should be able to be integrated into existing communications	£0	Consumer Credit Act 1974
Article 5 – Pre-contractual information; likely burden	-£24,800,000	Consumer Credit

[25] http://www.oxera.com/cmsDocuments/Oxera%20report%20on%20CCD%20April%202007.pdf
[26] http://www.bis.gov.uk/files/file51406.pdf

decrease due to standardised and prescriptive pre-contractual information. Therefore it should require less legal advice on format and information is compliant with UK legislation. This leads to a 25% reduction in the costr of 'external services' associated with this obligation		(Disclosure of Information) Regulations 2004
Article 4 – Advertising; likely decrease in burdens as one is removed and one is altered	-£1,300,000	Consumer Credit (Advertisement) Regulations 2004
Article 17 – Assignment of rights; one-off burden associated with notification for consumers whose debts have been sold on – not included £600,000 one-off charge in overall calculation	£0	Consumer Credit Act 1974
Article 9 – Database access; increase in admin burden due to additional time taken in explaining application rejections to consumers	£750,000-£1,100,000	Consumer Credit Act 1974
Article 15 – linked credit agreements; implementation of this article is unlikely to entail any additional admin burdens	£0	Consumer Credit Act 1974
Article 8 – Creditworthiness; new obligation on lenders to carry out checks of customers creditworthiness – admin burdens unlikely to be significant given light-touch approach to implementation, as many lenders already undertake some form of creditworthiness assessment, and such an assessment is not set out prescriptively in legislation	£0	Consumer Credit Act 1974
Article 5.6 – Adequate explanations; increase due to introduction in the Consumer Credit Act of a new requirement on lenders to explain certain aspects of credit agreements to consumers at pre-contractual stage	£845,000	Consumer Credit Act 1974
Article 16 – Early Repayment; likely increase due extension of Consumer Credit Act to include partial early repayment	£260,000	Consumer Credit Act 1974

16. A full analysis of the areas where the UK implementation of the CCD goes beyond the minimum EU requirements is in Annex A.

Background

17. The original proposal[27] for a new Consumer Credit Directive (CCD) was adopted by the Commission in 2002, intended to cover new forms of consumer credit and facilitate the internal market in this sector. However, this was subject to a significant number of amendments by the European Parliament (in particular altering the scope and level of harmonisation[28]), which adopted amendments in April 2004, with the Commission adopting an amended proposal in October 2004.[29] BIS (then DTI) consulted on this proposal in February 2005.[30]

[27] COM (2002) 443 final

[28] Whereas the Commission had proposed total harmonisation, the European Parliament preferred 'optimum harmonisation' which in effect means that Member States would retain the right to go further than the standards laid down in the Directive. However, the rules on APR would be subject to full harmonisation in order to facilitate the internal market.

[29] **http://ec.europa.eu/consumers/cons_int/fina_serv/cons_directive/credit_cons_en.pdf**

[30] **http://www.berr.gov.uk/consultations/page14387.html**

18. The Commission then published a second revised text in October 2005[31], which led to a supplementary consultation in March 2006[32] that included a partial regulatory impact assessment. The Government response to this consultation was published in November 2006.

19. Following political agreement in May 2007, the proposal was formally transmitted to the European Parliament in September 2007, where it was agreed in January 2008.

Interaction with other legislative provisions

20. There are significant overlaps with existing consumer credit legislation. The Consumer Credit Act 1974 regulates credit agreements (above £50) and contains equivalent provisions to almost all Articles of the Directive, as well as provisions on other matters that the Directive is not concerned with. As a result, the Directive will require amendments to the Act and subordinate legislation that flows from it.

21. The Directive's scope is narrower, both in terms of the matters covered and in the kind of credit agreements falling within its scope. Those agreements currently caught by UK consumer credit legislation which are not caught by the Directive are as follows:
    - lending to small businesses
    - loans below €200 (£160)
    - loans above €75,000 (£60,260)[33]
    - second-charge mortgages
    - hire purchase agreements
    - free credit
    - interest-free credit (repayable within 3 months with only insignificant charges)
    - modifying agreements which are the outcome of a court settlement or allow deferment of payment of an exiting debt free of charge
    - pawnbroking

22. Although the Directive's scope is narrower than the Consumer Credit Act, extensions of the Directive to particular types of lending will be considered on a case-by-case basis. For further detail, please see discussion of article 2.

23. There is also some read-across to other EC instruments. In particular, the Payments Services Directive (Directive 2007/ 64) is intended to create a single market for payment services and contains provisions on payment instruments, including credit cards. Although a few of these provisions are similar to the CCD to some extent, there is unlikely to be any significant impact for business, as the Government is taking the approach that – where there is a conflict between the PSD and consumer credit provisions – consumer credit legislation, either provided by the Act or the CCD, will take precedence.

24. There are also provisions in the Unfair Commercial Practices Directive (Directive 2005/29/EC) that read-across to CCD provisions on advertising. However, it is clear that these cannot override the more specific provisions in the CCD relating to advertisements, although there could still be circumstances where the more general UCPD provisions on misleading promotions could be relevant in respect of a credit advertisement.

25. The CCD will also impact on the Distance Marketing of Consumer Financial Services Directive (Directive 2002/65/EC). The CCD will require that further pre-contractual information is provided in the case of voice telephony communications that lead up to the conclusion of a credit agreement.

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[31] See COM (2005) 483 final/2, Corrigendum published on November 23, 2005
[32] **http://www.berr.gov.uk/consultations/page27458.html**
[33] Using exchange rate as set out in article 28 of the Directive (£1 = €0.80345)

Scale and scope

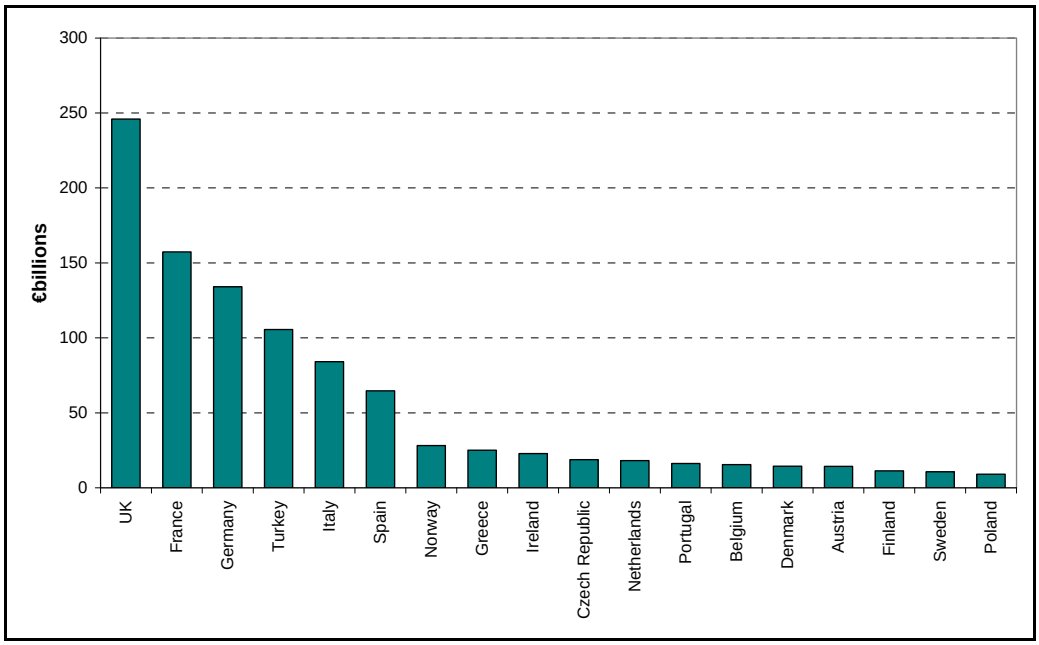
European consumer credit market

26. The EU consumer credit market is fragmented, with significant differences between national markets in terms of market size/structure, products offered and consumer demand. There is very little evidence on consumer satisfaction with the functioning of the European consumer credit market. Survey evidence suggests that consumers are 'quite satisfied' with retail banking services in the EU25, with an average score of 7.8 out of 10.[34]

27. Analysis conducted for the European Commission estimated the total size of the consumer credit market to be over €1.2 trillion, or almost 10% of EU GDP.[35] However, this is likely to be an underestimate, as the scale of operations for financial institutions is not known in all Member States. According to Eurostat, in 2007 there were approximately 6,500 credit institutions across the EU, employing over 2.5 million people.

28. The UK, France and Germany have the largest consumer credit markets in the EU (collectively accounting for almost 60% of total outstanding credit)[36], but there is considerable variation in the extent of unsecured lending across Member States, as shown in Chart 1 below.

Chart 1: Gross lending of unsecured credit in Europe (2008, €bn)



Source: Datamonitor

29. On a per capita basis, Ireland, Cyprus and Spain had the highest level of consumer indebtedness at the end of 2008 at more than €5,000 per person, which reflects high per capita incomes and a high propensity for debt. In contrast, certain Member States (such as Latvia, Bulgaria, Estonia, Hungary, Lithuania and Slovakia) were characterised by very low levels of per capita debt (less than €500 per person). [37]

30. Indebtedness relative to income also varied widely across Member States – in Poland and Spain, outstanding consumer credit exceeded 20% of household disposable income, while

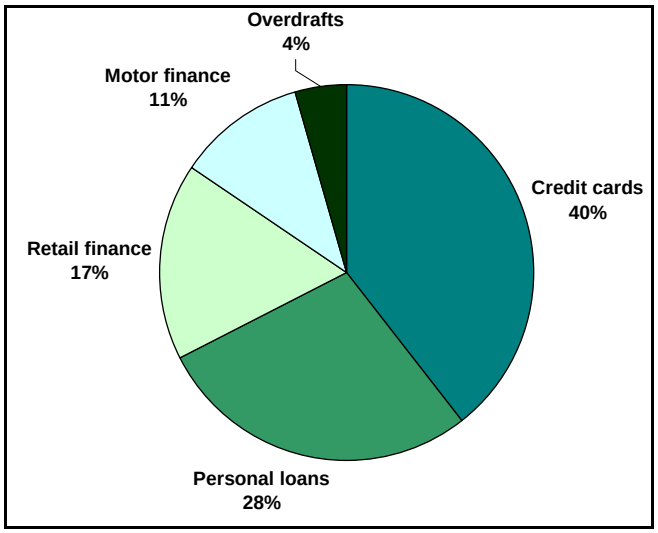
[34] 'Consumer satisfaction survey', by IPSOS INRA for European Commission, DG Sanco (May 2007)
[35] 'Establishment of a benchmark on the economic impact of the Consumer Credit Directive on the functioning of the internal market in this sector and on the level of consumer protection', GHK (2009)
[36] With the UK alone accounting for 26% (source: Datamonitor European Consumer Credit Model 2009)
[37] 'Establishment of a benchmark on the economic impact of the Consumer Credit Directive on the functioning of the internal market in this sector and on the level of consumer protection', GHK (2009)

levels of indebtedness were much lower in Lithuania, Netherlands, Hungary, Estonia, Luxembourg and Slovakia (where outstanding credit was less than 5% of disposable income).[38]

31. This difference is also reflected in reliance on credit to finance consumption – in Spain, Poland, Ireland and Cyprus, outstanding consumer credit accounted for more than 30% of household consumption, which indicates a high reliance on borrowing for households in these Member States.[39] However, in 8 Member States the ratio was less than 10%[40], which indicates more conservative attitudes to borrowing and less comfort with the idea of having debt.

32. Overall, a total of €997 billion in unsecured credit was lent to European Member States in 2008, of which the largest element was credit card lending (at 40%).[41] Personal loans were the next largest category, accounting for just over a quarter of gross lending (28%), followed by retail finance (at 17%). Motor finance accounted for just over one-tenth of gross lending (11%), with overdrafts making up only 4%. However, this mix of different products varied widely across different countries – for example, overdrafts accounted for almost three-quarters of gross lending in the Czech Republic, while in France credit cards accounted for just 2.5% of gross lending.

Chart 2: Composition of European gross unsecured lending (2008)



Source: Datamonitor

33. Differences in product mix can be an important factor in explaining price differentials across countries. Evidence from a recent study conducted for the European Commission finds that price differentials across Europe can be significant – for example, the average APR for new lending ranged from over 31% in Estonia to less than 7% in Finland.[42] However, there a number of other factors that may help to explain these discrepancies – for example, there will be considerable differences in fee structure, credit risk, institutional structure, regulatory framework, capital market development and consumer preferences in individual countries.

34. Most lending to households in the EU continues to take place within domestic markets due to a number of factors on both the supply and the demand side, which are explored further below. Several countries with more open economies (e.g. Benelux countries) or smaller

[38] Ibid.
[39] Ibid.
[40] Luxembourg, Malta, Netherlands, Latvia, Hungary, Estonia, Lithuania and Slovakia
[41] Data on credit card holding shows that credit card penetration generally remains low in most European countries, except for the UK, Spain, Luxembourg and Portugal
[42] 'Establishment of a benchmark on the economic impact of the Consumer Credit Directive on the functioning of the internal market in this sector and on the level of consumer protection', GHK (2009)

economies that may not be able to sustain substantial domestic lending (e.g. Malta) display significantly more cross-border activity (see Table 1 below).

Table 1: Domestic and cross-border non-bank loans (Q4 2009)

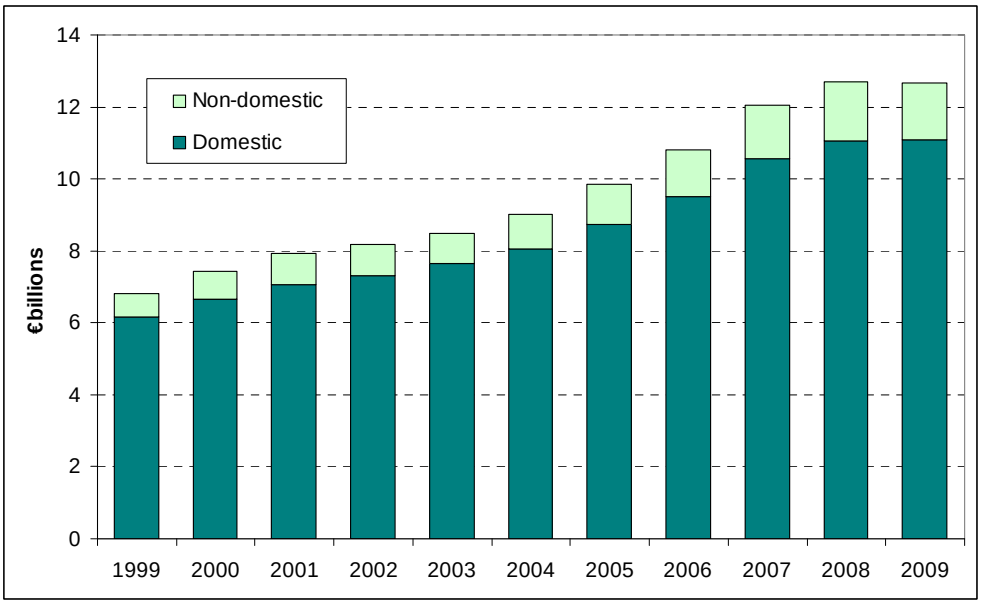
	Loans to non-MFIs (€bn)	Domestic transactions (%)	Euro area transactions (%)	EU transactions (%)	Non-EU transactions (%)
Italy	**1,850.0**	97.3	1.9	0.3	0.5
Finland	**165.9**	97.2	0.7	1.2	0.9
Spain	**1,969.6**	96.8	1.4	0.8	1.0
Slovakia	**31.7**	96.5	1.6	1.3	0.6
Portugal	**291.2**	94.8	3.4	0.4	1.4
Greece	**214.5**	93.9	0.7	1.3	4.0
Slovenia	**35.4**	91.5	0.8	0.6	7.1
France	**2,024.2**	87.0	4.5	1.9	6.6
Germany	**2,692.5**	85.1	5.9	2.6	6.3
Netherlands	**1,120.0**	84.6	6.8	2.1	6.5
Cyprus	**57.9**	78.9	6.0	5.2	9.8
Ireland	**447.8**	75.0	8.3	8.1	8.6
Austria	**414.6**	74.3	10.2	7.0	8.5
Belgium	**371.9**	72.1	12.9	8.5	6.6
Malta	**21.4**	36.0	8.4	8.4	47.2
Luxembourg	**186.5**	33.4	41.2	4.8	20.6

Source: Deutsche Bundesbank Statistics[43]

35. Levels of cross-border lending to non-monetary financial institutions (non-MFIs) differ significantly across Euro area countries, varying from 2.7% in Italy to 66.6% in Luxembourg. Latest figures for the Euro area lending (Q4 2009) show that 12.4% of all non-MFI lending was to other countries (5.2% within the Euro area, a further 2.3% to other EU Member States and 4.9% to non-EU countries). As this figure also includes lending to commercial sectors, cross-border lending to consumers will be less than this 12.4%. However, this figure is more than the comparable figure from 10 years ago (Q4 1999), when only 9.5% of lending was conducted cross-border, indicating that the willingness of European lenders to engage in cross-border lending has increased during the past 10 years (in both absolute and relative terms).[44]

[43] **http://www.bundesbank.de/statistik/statistik_eszb_neuesfenster_tabelle.php?stat=domestic_cross_border&lang=.en**
[44] It should be noted that Euro area cross-border lending figures for Q3 2003 do not include data for Cyprus, Malta, Slovakia and Slovenia, as they had not yet acceded to the European Union.

Chart 3: Domestic and non-domestic non-MFI lending in Euro area (1999-2009)



Source: Deutsche Bundesbank Statistics

36. The supply of consumer credit is rapidly changing, with the emergence of new distribution channels and product innovations reflecting the recent change in consumer demand patterns, from less personalised/local branch shopping to increased use of electronic distribution channels, such as the internet. This should favour future integration in consumer credit markets.

<u>UK consumer credit market</u>

37. The UK consumer credit market is one of the most highly developed and sophisticated in the world, both in terms of the diverse range of institutions that provide credit and in terms of the different forms of agreement available. As shown above, the UK is the largest consumer credit market in Europe, accounting for almost 25% of the total amount of consumer credit lent across the EU in 2008.[45]

38. Econometric analysis of empirical data on the sensitivity of consumption to changes in real income shows that UK consumers make relatively more use of the financial system to maintain their spending when their income fluctuates in comparison to other EU Member States, which would help to explain the relatively high reliance of UK households on consumer credit.[46]

39. Total UK consumer lending now stands at £1.46 trillion, of which the vast majority (£1.24 trillion) is accounted for by mortgage debt, which is not covered under the Directive.[47] Although the precise number of consumer credit providers is unknown, it is estimated that the number of consumer credit licences in issue is in excess of 100,000. Of these, however, it is estimated that only 3,500-5,000 are active lenders. New products and practices are constantly evolving, and this presents a challenge to the lawmaker, who has to balance protection for the consumer against the need to avoid undue restrictions on entrepreneurial activity.

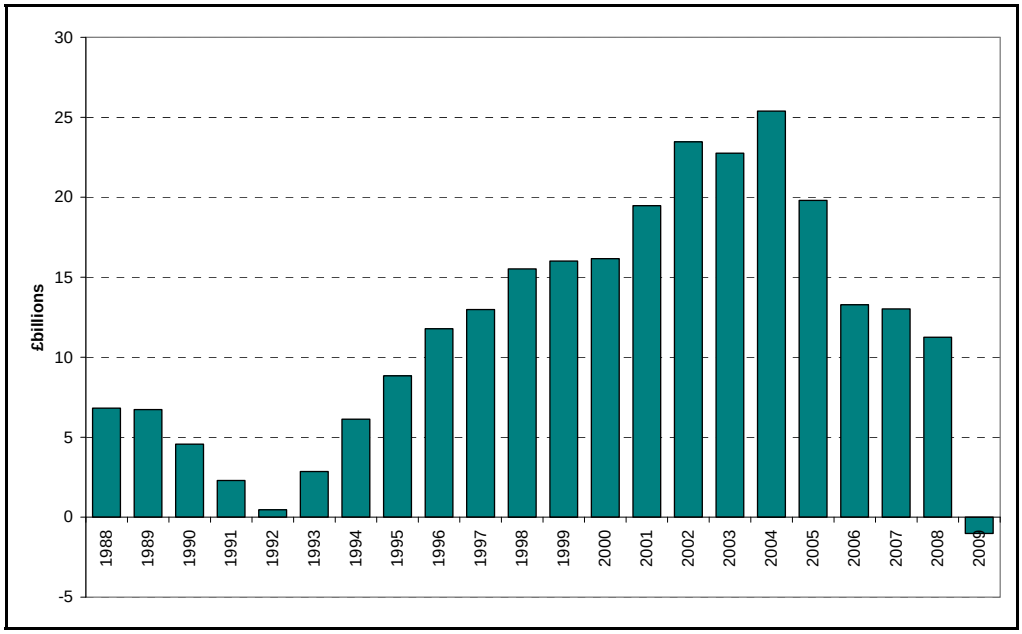
40. As of January 2010, the total amount of outstanding UK consumer credit was £225 billion. Although this has fallen recently as consumers seek to pay down their existing borrowing, it is still substantially higher than in the past – in comparison, outstanding borrowing in 1993

[45] Source: Datamonitor European Consumer Credit Model 2009
[46] 'Establishment of a benchmark on the economic impact of the Consumer Credit Directive on the functioning of the internal market in this sector and on the level of consumer protection', GHK (2009)
[47] Source: Bank of England (Bankstats, March 2010)

was just over £50 billion.[48] Annual net unsecured lending also grew substantially over this period, though levels started to fall slightly earlier and even became negative for the first time in 2009, as shown in Chart 4 below.

41. Use of credit products has also become more commonplace – for example, survey data for 2002 found that 47% of households had at least one unsecured credit commitment, with 7% having four or more. [49] In comparison, recent analysis of survey data from 2008-9 found that 64% of households had at least one unsecured credit commitment, with the proportion having four or more rising to 11%.[50]

Chart 4: Total annual net unsecured lending in the UK, 1988-2009

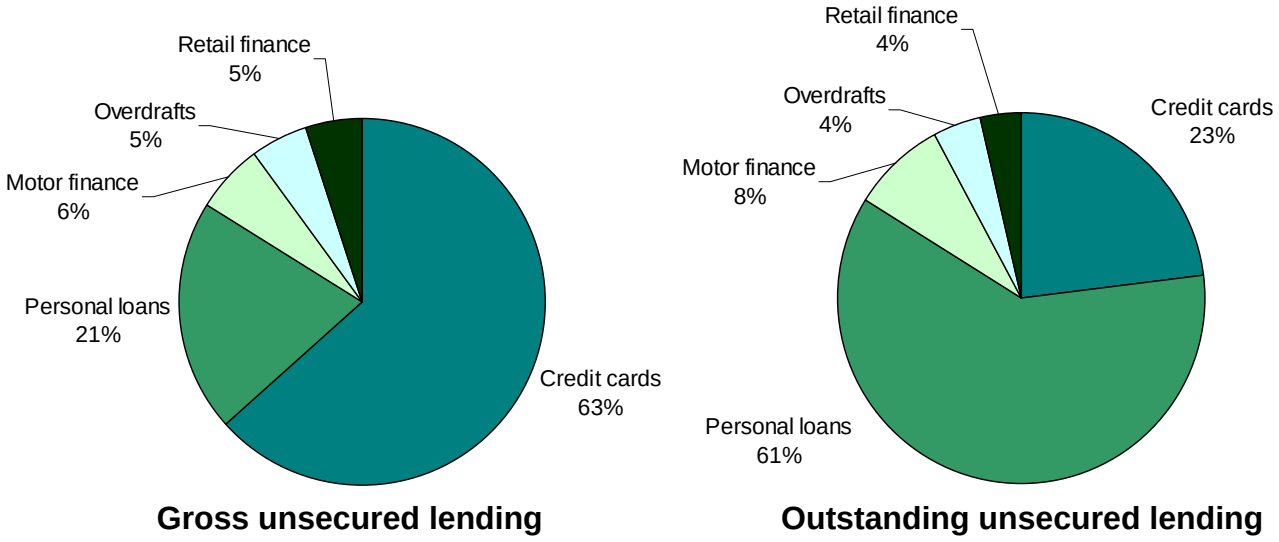


Source: Bank of England

42. In terms of the importance of different types of credit product, credit card lending is the most popular, accounting for almost two-thirds of gross lending, which is much higher than the comparable figure for the whole of Europe (40%, from Chart 2). However, credit cards account for less than a quarter of outstanding unsecured lending, due to the high proportion of cardholders who pay off their balance in full each month.[51] Personal loans are the next most important in terms of gross lending (21%, compared to 28% for overall European lending) and also account for the highest proportion of outstanding lending, at 61% (due to their longer-term nature). Retail and motor finance collectively account for just over 10% of both gross and outstanding unsecured lending, which is well below the contribution for Europe as a whole (at almost 30%; see Chart 2).

[48] Source: Bank of England
[49] 'Over-indebtedness in Britain', Elaine Kempson (September 2002)
[50] 'Over-indebtedness in Britain: Second follow-up report' (2010)
[51] Recent research suggests that this figure is around 70%

Chart 5: Composition of UK gross unsecured lending & outstanding lending (2008)



Gross unsecured lending **Outstanding unsecured lending**

Source: Datamonitor

Cross-border trade in financial services

43. In attempting to assess the impact of the Consumer Credit Directive on consumer credit, it is important to consider the effects on cross-border trade. This section looks at the extent of cross-border trade that already exists in financial services and consumer credit.

Demand side

44. A Eurobarometer survey in 2005[52] found that the vast majority of respondents (85%) indicated that they have never purchased financial services from firms located in another Member State. There was considerable variation across countries – in Luxembourg, 19% had opened a bank account with a firm located in another Member State and 8% had obtained a credit card cross-border; in Belgium and Austria, 11% had opened a bank account in another Member State.

45. This reluctance also seems to be reflected in future intentions – 75% of respondents across the EU25 stated that they did not intend to obtain any financial service from a firm located in another EU country. Similarly, this varied widely across countries – from 87% in Greece to 55% in Slovakia.

Supply side

46. There are a number of ways in which credit may be offered across borders - credit providers in one Member State may:
    - start offering credit in another Member State by opening an office or setting up a network of branches in that Member State;
    - enter into a joint venture with an existing local credit provider, or acquire, or merge with, a local credit provider; or
    - start offering credit in another Member State by using their offices in their own Member State. The credit provider would then typically offer credit over the Internet and/or by phone.

47. A report by Civic Consulting for the EU Parliament on the Consumer Credit Directive included a survey of national banking associations on the extent of cross-border trade in financial services. This showed that only a very limited number of cross-border financial

[52] Special Eurobarometer 230: 'Public Opinion in Europe on Financial Services'

services transactions – less than 0.1% of total consumer credit transactions – currently take place as 'direct cross-border transactions'.[53]

48. This has been supplemented by further work conducted for the European Commission, which also found that direct cross-border lending was insignificant – only 20% of respondents offered cross-border credit directly to consumers in other EU Member States and cross-border balances made up less than 1% of total outstanding credit for 94% of respondents. A more recent survey found that 40% of financial intermediaries engaged in cross-border lending; however of these, only 2 provided cross-border credit, while the rest operated via local establishment such as branches or subsidiaries.[54] A large percentage of banks responding to the Retail Banking Survey (2008) conducted by DG Economic and Financial Affairs stated that they do not undertake any cross-border activities, either because they are focused on their domestic markets or because they belong to an international group with subsidiaries in different EU countries.

49. The most significant distribution channel for creditors in other Member States is via branches and subsidiaries (including majority holdings in local banks), though this is still less than 1% across a range of products, according to the majority of respondents to the banking association survey. However, five banking associations (including the UK) estimated this percentage to be in excess of 10% - the Consumer Credit Association estimated that the percentage of members' business done through this route to be significantly higher than 10%, and stated that a very large member of the association has over 1.5 million customers served through subsidiaries in other Member States. Recent survey work completed for the European Commission found that 31% of respondents provided cross-border credit via branches and/or subsidiaries.[55]

50. Local establishment – whether through acquisition of an existing market participant or through a *de novo* enterprise – avoids the legal and institutional barriers that can prevent direct cross-border provision. It is therefore unsurprising that the overwhelming proportion of cross-border provision of retail financial services is through local establishment (confirmed by the survey findings above). This situation has consequences for the creation of a single market in consumer credit, as discussed further below.

51. The extent of EU fragmentation within the retail banking sector is highlighted by the fact that the average share of foreign branches and subsidiaries accounts for only about 15% of the Euro area banking market, though there are several banks which have been successful in establishing themselves in consumer credit markets in several Member States. The incidence of cross-border mergers and acquisitions in banking remains, according to the European Commission, fairly low and there are very few players in retail banking that have a leading market share in two or more Member States, with foreign banks tending to have much stronger market positions in the new Member States than in the EU 15.

52. Research conducted for the European Commission finds that direct cross-border lending remains limited, with a high level of heterogeneity persisting on various key aspects, including prices, available products and distribution channels. Integration has mainly occurred on the supply side of the market, through firms establishing subsidiaries and branches outside domestic markets.[56]

[53] That is, a transaction between a creditor and consumer in two different EU Member States – i.e. the product is not sold through branches, subsidiaries, or majority holdings of a creditor in the country where the consumer is resident

[54] 'Establishment of a benchmark on the economic impact of the Consumer Credit Directive on the functioning of the internal market in this sector and on the level of consumer protection', GHK (2009)

[55] Ibid.

[56] For example, national research indicated that almost all the main banks in the new EU Member States (specifically Central and Eastern Europe) are under the ownership of banks based in the EU15 (source:

53. This indicates the existence of significant barriers for further integration of the financial retail market in large parts of the EU.

Barriers to trade for consumer credit

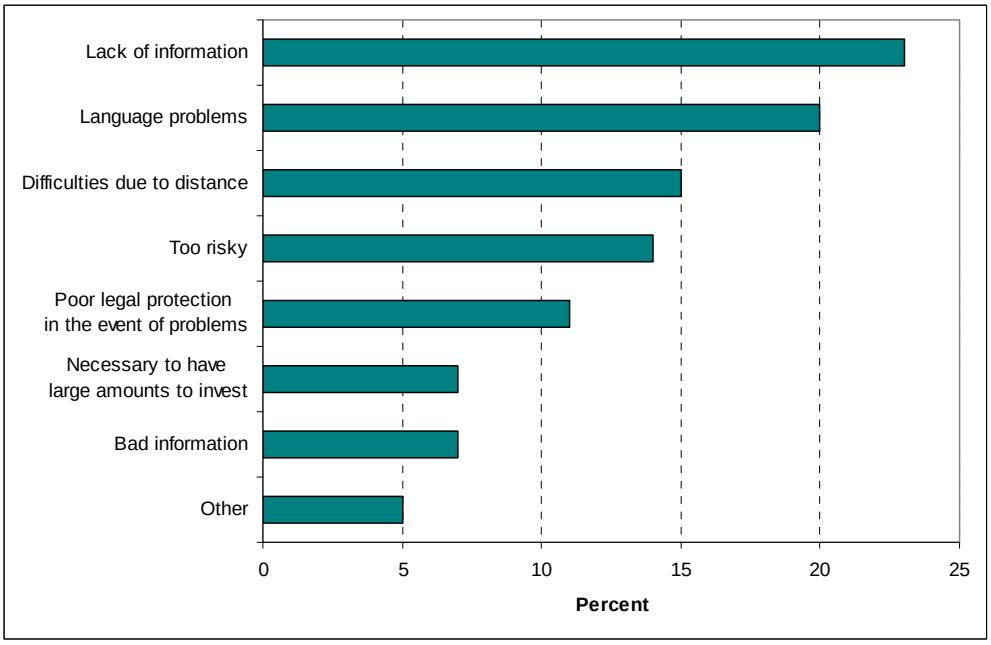
54. Following on from the section above, this section looks at whether there are barriers to intra-EU trade in consumer credit and, if so, the nature of these barriers in relation to both consumers and suppliers of credit.

Demand side

55. According to the 2005 Eurobarometer survey[57], just over 30% of respondents state that there are no obstacles preventing them from using cross-border financial services. Indeed, distance purchasing of financial services is relatively common domestically – on average, 12% of consumers across the EU27 have purchased a financial service[58] over the internet, phone or post in the last 12 months. However, when this is narrowed to those who have purchased financial services from a supplier or provider located in another EU country, the overall proportion falls to just 1%.[59]

56. In terms of barriers identified by consumers, lack of information and language problems were the two most popular reasons given (23 and 20 per cent respectively, as shown in Chart 6 below). Other barriers included: difficulties due to distance, too much risk, poor legal protection, high levels of capital for investment and bad information.

Chart 6: Obstacles preventing use of financial services elsewhere in the EU identified by consumers



Source: Special Eurobarometer 230: 'Public Opinion in Europe on Financial Services'

57. Respondents to a slightly more recent Eurobarometer survey again identified language and information issues – in various guises, be it too little, too much or not easily understandable – as two very important barriers to the purchase of financial services across borders (as shown in Chart 7 below). Lack of personal contact, risk of fraud and low levels of consumer

'Establishment of a benchmark on the economic impact of the Consumer Credit Directive on the functioning of the internal market in this sector and on the level of consumer protection', GHK (2009))

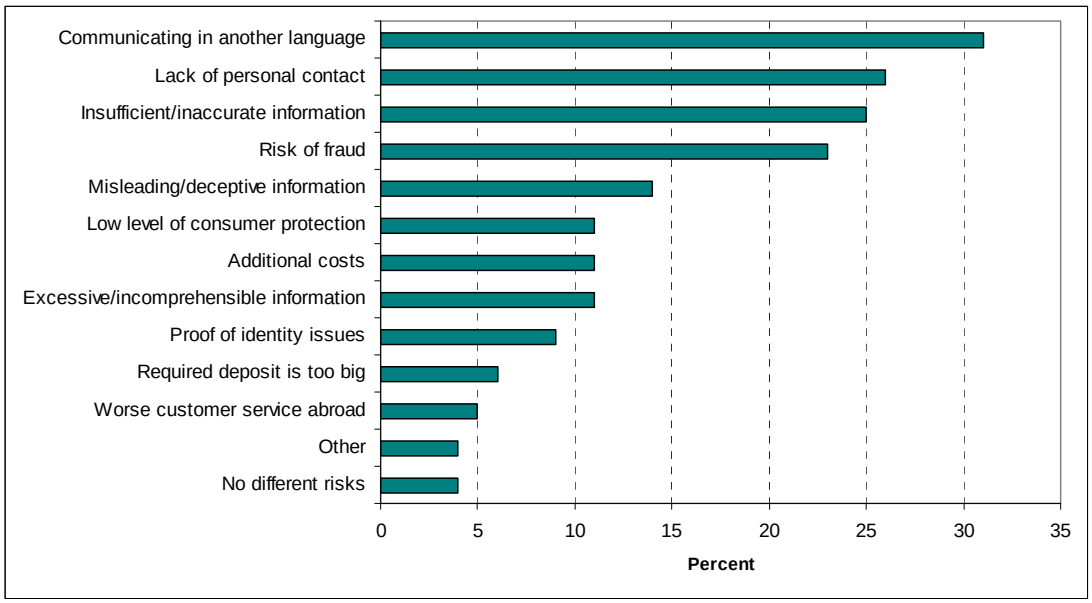
[57] Special Eurobarometer 230: 'Public Opinion in Europe on Financial Services'

[58] Such as a current account, savings account, insurance policy or mortgage

[59] Special Eurobarometer 298

protection were also given as important reasons for preventing cross-border purchase of financial services.

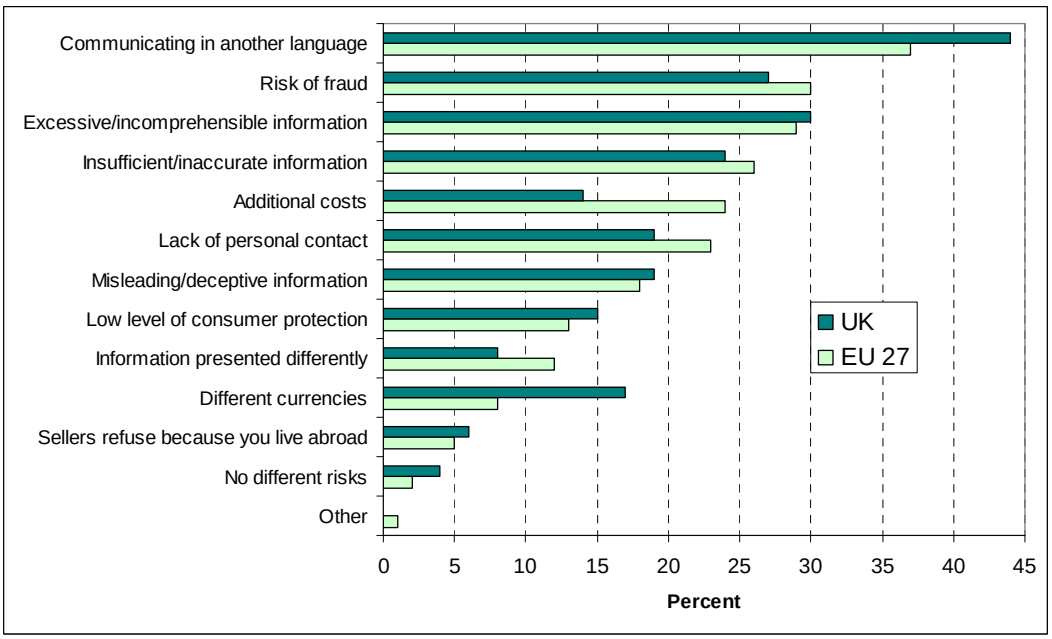
Chart 7: Obstacles preventing use of financial services elsewhere in the EU identified by consumers



Source: Special Eurobarometer 232: 'Consumer Protection in the Internal Market'

58. This has since been added to and updated, with a Special Eurobarometer published in October 2008[60] asking about barriers to purchasing cross-border financial services (shown in Chart 8 below).

Chart 8: Obstacles preventing use of financial services elsewhere in the EU identified by consumers



Source: Special Eurobarometer 298: 'Consumer Protection in the Internal Market'

59. As can be seen, issues around communicating in another language persist (particularly so for UK consumers), but information is still a persistent problem that appears in various guises – e.g. excessive or incomprehensible information, insufficient or inaccurate information, misleading or deceptive information and the different ways in which information

[60] http://ec.europa.eu/public_opinion/archives/ebs/ebs_298_en.pdf

is presented. It could be expected that the Directive will address many of these issues, particularly around information and standardisation of how it is presented.

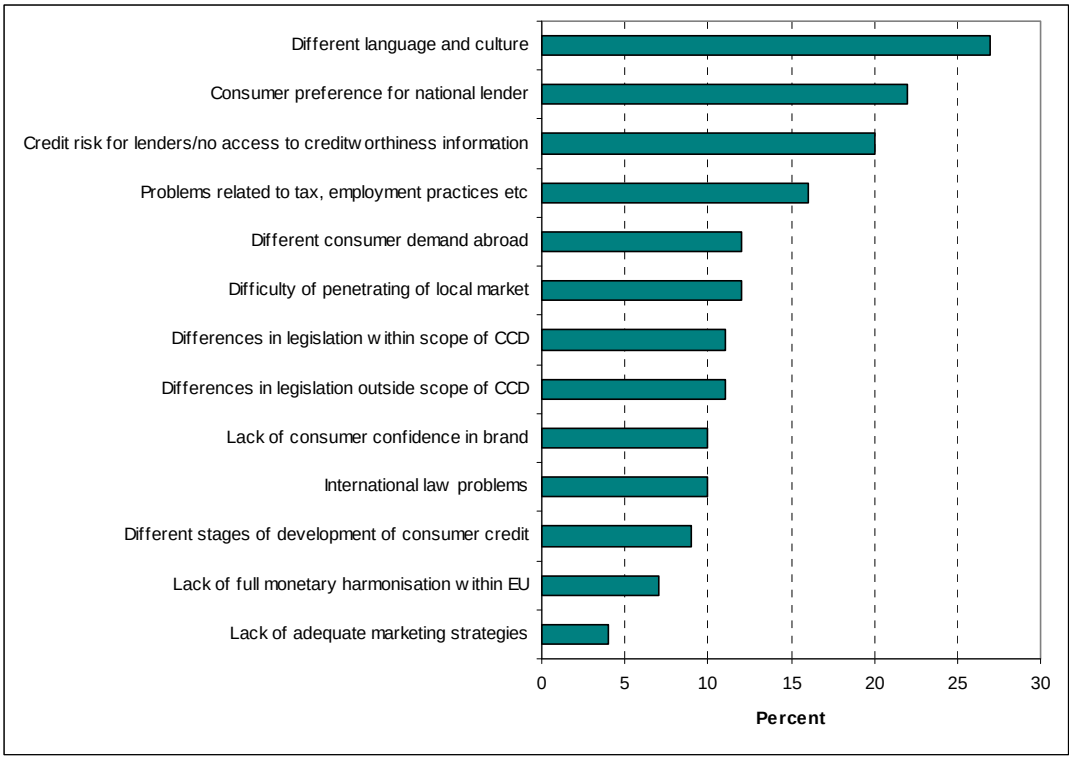
60. There is some evidence that the number of these 'direct' transactions is rising and consumers are increasingly considering this option, partly due to migration that leads to consumers using financial services in both the country of origin and country of residence. The development of customers with increasingly international preferences is further supported by reports that, in a handful of cases, traders distributing point-of-sale credit had concluded agreements with customers from neighbouring EU countries. However, this required special permission from the bank and was not general policy to serve cross-border clients.

Supply side

61. Looking now at the perspective of lenders, the responses of national banking associations to the survey conducted by Civic Consulting indicate that differences in language and culture were the most important barrier to cross-border trade in financial services. Consumer preferences, credit risk and problems related to non-consumer credit legislation are also significant, as shown in Chart 9 below.

62. Interestingly, respondents felt that barriers arising from differences in legislation within scope of the CCD were just as prevalent as those arising from differences in legislation not covered by the CCD.

Chart 9: Obstacles preventing use of financial services elsewhere in the EU identified by suppliers



Source: Broad Economic Analysis of the impact of the proposed Consumer Credit Directive, Civic Consulting

63. According to the Retail Banking Survey mentioned above, the main supply-side barriers preventing banks from providing consumer credit products directly across borders are:
    - Differences in regulatory systems (reported by 47% of respondents);
    - Differences in languages/cultures and legal/institutional mechanisms for debt recovery, consumer preferences for national providers and differences in national tax systems (reported by 20%-30% of respondents)
    - Access to information (11% of respondents), and

- Barriers of national anti-money laundering requirements (9%).

64. In their report on the impact of the CCD, Oxera found that the majority of credit providers they interviewed were unlikely to offer credit directly across borders. For most suppliers, their preferred method of entry into foreign markets was through a joint venture, merger/acquisition, opening their own local offices or setting up their own network of local branches.

65. A number of barriers to offering credit across borders were identified by Oxera, most of which are replicated above – lack of familiarity with (hence consumer confidence in) brand or reputation, 'natural barriers' (e.g. tailoring products to local consumer needs and attitudes), difficulty accessing distribution channels, customer risk assessment, differences in debt recovery procedures and differences in consumer credit regulations.

66. These findings, in part, reflect a key difference between the provision of credit products and other – in particular, non-financial – products that are bought and sold over the internet across borders, such as electronic appliances and other consumer products. For these products, the supplier does not need to know anything about its customers other than the delivery address. By contrast, in the case of the provision of credit products, in order to make its business commercially viable, it is crucial for credit providers to understand the risk profile of credit applicants in the new markets and the way in which debt can be recovered if they default.

67. Oxera made an assessment of these barriers to entry in their 2006 report on the impact of the CCD. Barriers to entry may not prevent entry entirely, but can affect the way in which credit providers enter foreign markets. For example, lack of brand and reputation is one of the reasons why credit providers often enter foreign markets in the form of a joint venture or through acquisition of a local credit provider with an established brand and reputation. However, there are examples of credit providers successfully building up a brand and reputation in foreign markets – e.g. GE Consumer Finance operates in 12 Member States, while Santander Consumer Finance operates in 14.

68. Similarly, although access to distribution channels can inhibit entry, some banks have managed to enter foreign markets by offering their products over the internet rather than through traditional distribution channels (e.g. a Dutch bank, ING, has recently started offering mortgages in addition to savings accounts in a number of EU Member States).

69. Some of the barriers highlighted above relate to the core business expertise of credit providers – for example, the ability to assess the risk profile of credit applicants and to recover debt from defaulting customers.

70. Assessing the risk profiles of credit applicants and acquiring the necessary information to build internal credit scoring models is costly and is therefore normally only worth doing if the new market segment is entered into at a certain scale. An alternative route for entry into a foreign market would be to purchase a loan portfolio from existing credit providers. Similarly, developing a business strategy to recover debt from defaulting customers is costly and is often only commercially viable if done at a certain scale.

71. A study commissioned by BIS finds that cross-border trade in consumer credit across the EU is currently very low, due to several other legal barriers to those addressed by the Directive (for example, differences in debt collection rules between Member States).[61] In addition, there are a number of non-legal barriers which remain, the most frequent of which are those caused by linguistic and cultural differences.

[61] 'Study of the effects on the UK economy of the revised Consumer Credit Directive', Copenhagen Economics (2009)

Benefits of a single EU market for consumer credit

72. One of the main objectives of the Directive is to contribute to the creation of a single European market for credit.

73. The theoretical concept underpinning the Directive is that, by harmonising credit regulation across EU Member States, providers would find it easier to offer credit across borders. The possibility to offer consumer credit throughout the EU, with access to almost 500m potential customers, should result in improved efficiencies and economies of scale for lenders and therefore deliver lower interest rates and greater credit availability, both in terms of the volume and variety of credit products.

74. For consumers, a single market for consumer credit would mean that they could be confident in purchasing credit from providers abroad, as they are assured that they benefit from the same degree of protection, irrespective of the origin of the credit product and comparison of products from different providers is facilitated through standardisation. Market integration should therefore lead to cheaper and more varied credit products, allowing consumers to manage their short- and medium-term mismatch of income and expenditures flexibly and at low cost.

75. This ultimately would lead to benefits from increased competition through widening consumer choice, lower prices resulting from competition and economies of scale and a greater variety of credit products that may increase further through enhanced incentives for innovation.

76. As set out earlier, there is currently significant divergence in prices for consumer credit across Europe. As we might expect that prices in a perfectly integrated market would converge across borders, this may indicate that the current level of integration in the European consumer credit market. Indeed, analysis indicates that some of these price differentials are persistent and have even possibly increased over the recent past, particularly for short-terms loans.[62]

77. However, it is unlikely that this market will be 'perfectly' integrated, due to some of the barriers outlined earlier. Nevertheless, the Consumer Credit Directive should help to address some of these, so that price differentials between countries for similar products and services are reduced.

78. Consumer credit liberalisation could have significant costs for consumers due to the inherent complexity of financial products, stemming from either a lack of consumer understanding, or from irrational decision making and resulting problems of over-indebtedness. This is not to say that market liberalisation will necessarily lead to such costs, but that ensuring consumers benefit requires vigorous measures for consumer protection. Effective consumer protection at a pan-European level can be expected to help overcome problems of customer trust in direct cross-border provision and hence directly enhance competition.

79. As set out earlier, the potential benefits of financial market integration could be very significant, with benefits estimated to be €130-180 billion. However, the potential benefits associated with a single pan-European market in retail financial services cannot be realised through local establishment alone.

[62] 'Establishment of a benchmark on the economic impact of the Consumer Credit Directive on the functioning of the internal market in this sector and on the level of consumer protection', GHK (2009)

80. As argued by Deutsche Bank Research[63]: "Unlike domestic consolidation, where synergies can be reaped on the distribution side (closure of overlapping branch networks), the investment case for cross-border retail deals must be made on the production side: selling the same products to a broader market using a single platform for product development, transaction services, and product administration so as to achieve economies of scale." In other words, local establishment only has a significant impact on economic efficiency if the barriers to direct cross-border provision are removed, allowing a single product to be delivered across a number of national markets.

81. Local establishment is only one of several distribution channels that can be used for delivery across national markets, and a channel which is likely to diminish in importance over time relative to telephone and the internet. Branches are not needed at all for the provision of some retail financial products and services, and it is in these cases – where competition from free-standing online and telephone-based providers is effective – that the potential competitive benefits of a single market in retail financial services are greatest. The removal of barriers to direct cross-border provision would then result in a significant increase in the number of potential and actual market entrants and a likely sharp reduction in cost and prices.

82. This is not to say that local establishment, without direct cross-border provision, does not have a role to play in the evolution towards a single market in retail financial services. Improved management practice, achieved through local establishment (via cross-border acquisition) can, even without removing the barriers to direct cross border provision, achieve some of the economic and efficiency benefits of a single market. A period of local presence may also be necessary in order to acquire the cultural and institutional understanding for the development of the eventual successful delivery of a single product across different national markets.

Will the Consumer Credit Directive achieve a single market for consumer credit?

83. Although from an economic point of view integration of the consumer credit market has considerable potential benefits for both consumers and lenders, stakeholders are rather pessimistic whether the CCD can be expected to achieve these in practice.

84. The survey of national banking and consumer associations by Civic Consulting found that:
- A large majority of national banking associations do not expect an increase of consumer confidence as a consequence of the proposed CCD, either for consumer credit agreements concluded nationally or cross-border. The majority of national consumer organisations that responded also have a negative view, but it should be noted that this is based on only a limited number of responses, with most operating in highly-developed consumer credit frameworks, such as the UK;
- The majority of banking and consumer associations do not expect an increase in the overall demand for consumer credit products resulting from the implementation of the CCD;
- Almost all national banking associations expect the range or variety and availability of credit products to either remain similar or to decrease with the implementation of the CCD;
- Most banking associations answering the survey do not expect an impact on competition, at either national or EU levels. However, a slight majority of individual banks that responded to the survey (albeit a non-representative sample, as this mainly covered large banks operating in many Member States) expected a fairly significantly increase in competition in the cross-border consumer credit market. The majority of consumer

[63] 'EU retail banking – Drivers for the emergence of cross-border business', EU monitor 34, Deutsche Bank (April 2006)

organisations that had an opinion expected a fairly significant increase in national competition.

85. As part of the survey, banking associations were also asked whether they would expect to achieve any of the cost reductions and economies of scale set out above from selling consumer credit products in other EU Member States. The responses were split – 40% expected cost reductions/economies of scale, while 50% did not. Some responses flagged up differences in consumer demand/preferences across Member States, which might lead to a need for greater tailoring and personalisation of products, resulting in cost increases rather than decreases. The key to economies of scale seemed to be an ability to use existing contracts/methods across many countries, which was generally not felt to be possible currently. It therefore seemed that the realisation of cost synergies would be limited to funding, accounting and (hardware) data processing only.

86. These comments seem to suggest that economies of scale can only be expected if pan-European products can be developed and the legal framework allows for a high degree of standardisation of contracts and processes. Even then, the potential for cost reductions may be limited from creditors' points of view.

House of Lords committee report

87. The House of Lords European Union Committee Report[64] agreed that there were potential benefits to both business and consumers of developing an internal market for consumer credit, but expressed concerns about the method for doing so. The CCD looks to promote cross-border credit through full harmonisation, facilitating the use of a single EU-wide credit agreement, about which the Committee remained unconvinced.

88. Further, the Committee found that barriers to a single consumer credit market were primarily due to other factors, such as language, culture and difficulties in penetrating a foreign market except by scale entry. In their view, the evidence suggested that full harmonisation was unlikely to displace the need for separate national credit agreements or facilitate internal cross-border market for other reasons. They felt that the most effective way of creating an internal market was to encourage greater convergence of market development and practice through other means, e.g. establishment/acquisition of branches and subsidiaries, borrowing of foreign market products/practices by local lenders and removal barriers at the local level (legal and administrative impediments; employment, conduct of business and taxation policies). Full harmonisation was felt to be more appropriate when a broadly similar range of products was available throughout the EU on competitive terms.

Oxera

89. In their report on the impact of the CCD, Oxera made an assessment of the barriers identified. Overall, they found that the impact of the CCD may be limited, as it removes only some of the differences in consumer credit regulation across countries.

90. Harmonisation of credit regulation may reduce some of the costs incurred by credit providers when entering foreign markets but, in terms of order of magnitude, these costs are likely to be small compared with the costs associated with other remaining barriers. For example, once a credit provider has decided to enter a foreign market, it incurs significant costs in developing credit scoring models and a strategy on debt recovery. This often means that it is worth having a local presence, which would also make it easier to hire local staff. The additional costs incurred by the credit provider in making sure that its business practices comply with local credit regulation are then likely to be small.

[64] 'Consumer Credit in the European Union: Harmonisation and Consumer Protection', House of Lords European Union Committee, 36th report of Session 2005-6 (July 2006)

91. It was therefore felt that mergers, acquisitions and entering at scale by opening offices in foreign markets were likely to continue to be the main mechanisms through which the European market for consumer credit would develop. The Directive's contribution to the creation of a single European market for credit would therefore be limited.

Copenhagen Economics

92. In their report for BIS, Copenhagen Economics find that the Consumer Credit Directive alone will not achieve a single market for consumer credit in the EU.[65] This is due to a range of barriers (both legal and non-legal) that will not be addressed by the Directive. They draw a parallel with the E-commerce Directive[66], which they feel covers similar provisions to the Consumer Credit Directive, but even after 7 years has had only a weak impact on e-commerce cross-border trade.

Rationale for Government intervention

93. As identified by responses to the Eurobarometer surveys shown above, consumers feel that there is a significant problem regarding information in relation to consumer credit.

94. This informational problem has been identified as having many dimensions – for consumers, in terms of the quantity of information they receive, the quality of the information or how it is presented to them. However, the end result is the same – consumers feel that they have insufficient information about the products they are trying to buy. This can lead to consumers making choices based on inaccurate or incomplete information, which means that they may ultimately choose the 'wrong' product (or possibly choose not to buy such a product at all) and so will not be maximising their utility.

95. Information problems have also been identified by suppliers as barriers to the proper functioning of the consumer credit market – this could take the form of lack of access to information about the creditworthiness of potential customers or lack of information about regulatory or legal frameworks in different countries, which are both mentioned above. The result is that suppliers do not have as much information about their customers and how they are supposed to operate within particular countries as they might like. This can lead to credit providers making inaccurate assessments of their customers' credit risk and ability to repay a loan, meaning that some loans will be made that should not have been offered if the market was working correctly (i.e. under conditions of perfect information), introducing inefficiency.

96. With these market failures arising from information asymmetries on both sides of consumer credit transactions (demand and supply), there is scope for addressing these through government intervention.

97. The Directive does seek to address these issues. For example, by ensuring that certain information is presented to consumers in advertising (articles 4, 10, 11), standardising the way that certain financial information in calculated (article 19), standardising the information provided to consumers prior to making a contract (articles 5, 6), requiring that consumers adequately understand the terms of credit agreements they enter into (article 5.6) and ensuring that lenders are satisfied that customers are 'creditworthy' (article 8).

Detailed provisions

98. The Directive includes a number of articles covering different aspects of the consumer credit regime. Some of these articles involve changes to the current UK regulatory regime, while

[65] 'Study of the effects on the UK economy of the revised Consumer Credit Directive', Copenhagen Economics (2009)
[66] http://ec.europa.eu/internal_market/e-commerce/directive_en.htm

others do not – the latter of these are grouped together in a single category (category 1 below).

99. Where certain articles do require changes to be made (and are therefore likely to incur costs), these can be categorised into two types: those where the Directive contains provisions for leeway in implementation and those that do (categories 2 and 3 respectively).

100. The articles are grouped into the following categories:

Category 1 – no/minimal change to existing regulatory regime

- Database access – article 9
- Assignment of rights – article 17
- Regulation of creditors – article 20

Category 2 – changes to existing regime; no options available

- Information to be included in advertising – article 4
- Pre-contractual information – article 5
- Overdrafts, comprising:
    - Pre-contractual information relating to overdrafts – article 6
    - Obligations on overdrafts – article 12
- Borrowing rate information – article 11
- Open-ended credit agreements – article 13
- Right of withdrawal – article 14
- APR calculation – article 19
- Obligations of credit intermediaries – article 21

Category 3 – changes to existing regime; options available

- Scope – article 2
- Adequate explanations – article 5.6
- Obligation to assess creditworthiness – article 8
- Information included in credit agreements – article 10
- Linked transactions – article 15
- Early repayment – article 16

101. In so far as it is possible, estimates for the benefits and costs of all articles have been made. However, for category 2 (where there is no scope for flexibility in implementation) it is not possible to identify discrete 'options' for implementation. The cost and benefits of these have attempted to be quantified, without looking at various options for implementation.

102. The impact of each of these categories will be considered and assessed separately.

Summary: Analysis & Evidence

Policy Option:	Description:
Implementation of category 1	**Implementation of the Consumer Credit Directive – articles for which there are no changes to existing UK regulatory framework (category 1)**

COSTS

ANNUAL COSTS	
One-off (Transition)	**Yrs**
£ 1.6m	10
Average Annual Cost (excluding one-off)	
£ 0.75m-1.1m	

Description and scale of **key monetised costs** by 'main affected groups'

Implementation costs for lenders related to database access (**£1m one-off**); cost of additional time providing information to failed credit applicants (**£0.75m-£1.1m annual**). Notification costs for customers whose debts have been transferred (**£0.6m one-off**).

Total Cost (PV) **£ 8.1m-11.1m**

Other **key non-monetised costs** by 'main affected groups' Ongoing costs associated with 'new' customers, whose debts have been transferred; potential costs to credit reference agencies (CRAs) of establishing data linkages with CRAs in other countries.

BENEFITS

ANNUAL BENEFITS	
One-off	**Yrs**
£ -	10
Average Annual Benefit (excluding one-off)	
£ -	

Description and scale of **key monetised benefits** by 'main affected groups'

Total Benefit (PV) **£ -**

Other **key non-monetised benefits** by 'main affected groups' Consumer benefits from notification about transfer of debts; potential benefits to UK consumers if EU lenders increase cross-border lending, possibly leading to lower prices for credit; potential benefit to UK lenders if they increase their cross-border lending and undercut other EU lenders.

Key Assumptions/Sensitivities/Risks Consumers need to switch (or at least threaten to switch) in order to realise many of the potential gains from increased competition; international suppliers must enter the UK market in order for consumers to be able to switch (or threaten to switch) to them.

Price Base Year 2009	Time Period Years 10	**Net Benefit Range** (NPV) **£ -8.1m to -11.1m**	**NET BENEFIT** (NPV Best estimate) **£ -9.1m**

What is the geographic coverage of the policy/option?			UK	
On what date will the policy be implemented?			June 2010	
Which organisation(s) will enforce the policy?			OFT	
What is the total annual cost of enforcement for these organisations?			£ Negligible	
Does enforcement comply with Hampton principles?			Yes	
Will implementation go beyond minimum EU requirements?			No	
What is the value of the proposed offsetting measure per year?			£ N/A	
What is the value of changes in greenhouse gas emissions?			£ N/A	
Will the proposal have a significant impact on competition?			Yes	
Annual cost (£-£) per organisation (excluding one-off)	Micro **Unknown**	Small **Unknown**	Medium **Unknown**	Large **Unknown**
Are any of these organisations exempt?	No	No	No	No

Impact on Admin Burdens Baseline (2005 Prices)				(Increase - Decrease)
Increase of	**£ 0.75-1.1m**	Decrease of	£ -	**Net Impact** **£ 0.75-1.1m**

Key:	Annual costs and benefits: Constant Prices	(Net) Present Value

Category 1 – no change to existing regulatory regime

Article 9 – Database access

103. This article was established to ensure non-discriminatory access to credit reference agency (CRA) data across the EU for all EU creditors and to ensure that consumers were appropriately informed on a timely basis when their applications for credit had been declined as a result of the information obtained from the CRA.

104. As set out in the study of retail banking by the European Commission, there are 3 types of credit reporting systems in the EU:[67]

- Dual systems (combining private and public credit registers), which applies in 10 Member States;
- Private systems, which applies in 12 Member States (including the UK), and
- Public systems, which applies in 2 Member States (France, Belgium).[68]

105. Several reasons are advanced for this diversity in credit reporting systems, including the differences in legal and regulatory frameworks for data protection, banking secrecy and credit data sharing across Member States.[69] It is noted that credit information markets remain fragmented along national lines, with only a few credit bureaux conducting cross-border reporting (even then only for low volumes of data). The main reason given for this low level of data sharing is the lack of demand (and to some extent, supply) for cross-border lending to consumers. However, it is acknowledged that regulatory barriers exist in some Member States, which limits the development of cross-border data sharing.

106. This lack of data sharing may create problems for the 15 million EU citizens[70] who have used their right to work and live in another Member State to their country of origin and who often cannot initially access the full scale of financial services in the host country. Currently, they are generally required to build up separate credit histories in each Member State in order to obtain credit. There is already a market-led initiative to facilitate cross-border data sharing across public registers, but this is limited to 7 countries.[71] Access to information was also raised as a potential barrier to lending by creditors (between 11% and 20%), when such information is used in assessments of borrowers' creditworthiness.

107. There are also issues about coverage – analysis by the European Commission shows that 12 national credit registers have coverage rates of 5% or less, with the remaining 13 having market coverage ratios of 35-80%, with 9 registers having coverage in excess of 50%. The clear majority of registers showing high coverage are in the EU15, with new Member States tending to have less advanced credit reporting systems, where retail banking markets are still maturing.[72]

108. Under this article, it is the Member State's responsibility to ensure access for creditors from other Member States to CRA databases in that Member State, to be used for

[67] 'Report on the retail banking sector inquiry', DG Comp (2007)
[68] Luxembourg has no public nor private credit register
[69] Legal analysis shows there is substantial divergence between countries – among the strictest regimes for credit reporting regulations are France, Germany and Ireland; on the lower end are Belgium and the Czech Republic
[70] 'Ten ways in which Europeans have benefited from the Single Market', European Commission (Nov 2007)
[71] A Memorandum of Understanding came into force in May 2005 in Austria, Belgium, France, Germany, Italy, Portugal and Spain. In addition some ACCIS members have signed bilateral Credit Bureau Data Exchange Agreements
[72] Ibid.

creditworthiness assessments, on a non-discriminatory basis. In addition to the initiatives mentioned above, some credit registers already enable cross-border data access to their clients for 'out-of-country' lending, on the same terms and conditions as would have been the case if that creditor had been 'in-country' (in effect, already compliant with this article of the Directive).

109. Industry responses to BIS's consultation raised concerns that UK lenders might be placed at a competitive disadvantage because their databases are more sophisticated and extensive than those in some other Member States. However, the article provides that the principle of reciprocity applies to other EU lenders seeking access to CRA databases in UK.

110. Cross-border data sharing will depend on borrowers' needs and corresponding demand from creditors, as well as local laws and provisions. For example, analysis by the Expert Group on Credit Histories finds that empirical incidence of cross-border data sharing is very low – only 0.17% of the total amount of requests received.[73] However, this analysis does suggest that if there is a request (i.e. demand from financial institutions), credit registers will be able to provide an answer.

111. In addition, article 9 also ensures that consumers who have their applications rejected as a result of a CRA search are informed immediately (consistent with the channel for application), and without charge, of the name and contact details of the CRA consulted.

112. Although there is no specific current requirement in UK legislation with respect to advising consumers as to why their application for credit has been declined, industry Codes of Conduct do cover this issue. For example, the BBA Code of Conduct indicates that where lenders are unable to provide the credit requested, "… we will explain the main reason why, if you ask us to…" and this will be provided in writing or electronically if requested.

113. There is a reasonable presumption that the term "databases" is meant to refer to CRA databases rather than any internal databases held by any large creditor, which was confirmed verbally at the CCD Transposition Workshop in November 2008.

Costs

114. Given that key industry bodies already set out in their codes of conduct the need to provide explanation to consumers when their request for credit has been declined, article 9 would not appear to constitute a new burden on lenders. Indeed such codes of conduct promote the need for this communication irrespective of the key factor being the consultation of the (CRA) database.

115. In terms of cross border-access into the UK, this will primarily be an issue for the UK CRAs who will need to provide non-discriminatory access to EU creditors (from outside the UK). To that end, it is understood that the UK CRAs – and indeed their European trade organisation ACCIS[74] – are comfortable with the requirements imposed by the CCD.

116. If implementation results in a significant increase of consumers (who are declined credit applications) asking for details of particular CRA databases, this might increase the amount of time spent by lender's staff in processing credit applications, and hence costs. If it is assumed that each failed application would entail an additional 5 minutes time, the ongoing

[73] 'Report of the Expert Group on Credit Histories' (EGCH), May 2009

[74] The Association of Consumer Credit Information Suppliers (ACCIS) was established in Dublin in 1990; it currently comprises 35 consumer credit reference agencies in 25 European countries and 7 associate members in other countries.

potential maximum cost to lenders associated with this could be between **£0.75m-£1.1m per year**.[75]

117. Estimates provided by industry suggest that one-off implementation costs would be minimal – around £0.1m for a large lender. This would imply industry-wide implementation costs of around **£1m**. Responses to consultation also raised the issue of implementation costs incurred by domestic CRAs in linking data with multiple CRAs in other countries. These costs could be substantial – depending on the method used, each link could cost £0.5m-£1m to implement (plus additional maintenance costs).

Benefits

118. There may be additional benefits to domestic consumers under the implementation of this Directive, if increased access to credit database information results in more European lenders offering credit to domestic consumers. Such lenders may potentially be able to offer credit at lower prices to undercut domestic providers of credit, which would lead to benefits for domestic consumers.

119. There may also be a corresponding benefit to domestic lenders if, as a result of implementing this article, they can increase their cross-border lending to EU consumers. This will depend on the extent to which domestic lenders already operate in other EU countries (which already appears to be relatively high), the willingness of European consumers to borrow from UK-based lenders (which will be improved by implementation of the Directive), the quality of the information made available to UK lenders and the price differential between UK-based lenders and extant domestic lenders.

120. Although 'access to creditworthiness information' was given as a potential barrier to lending for 11-20% of lenders across Europe, it is difficult to quantify how many European lenders might enter the UK (and vice versa) or how much cheaper they might be, if at all.

121. This article is unlikely to have a significant impact in terms of additional information provided to domestic consumers, as it only formally ensures that customers have a right to ask for contact information for external databases and confers an obligation on lenders to provide it. Based on current industry practices, it seems that UK lenders already provide this and so implementation of this article would not seem to provide an additional benefit for consumers.

122. According to survey data, around 15% of consumers have requested their credit report in the last 12 months. [76] A priori, it is difficult to know whether implementation of this article might increase this number or not. However, given that the price charged to access a statutory credit report (currently £2) covers the costs associated with its production, even if requests do increase this should not result in any overall net impact.

Scope: This requirement will be applied across all types of lending, with the exception of agreements resulting from court settlement, pawnbroking and second-charge mortgages.

This decision has been taken to ensure consistency in terms of the rights that consumers have for different types of unsecured lending product. In the case of pawnbroking, this article is unlikely to be relevant, as pawnbrokers tend to rely on the value of the pawn in their assessment of whether to lend to an individual. In the case of agreements resulting from court settlement, this article is also not relevant. As set out above, second-charge mortgages have been exempted due to the ongoing review of regulation in this area.

[75] Analysis of survey data suggests that 18% of households applied for unsecured credit in the last 6 months – based on 25m UK households, this implies 4.5m credit applications per year (source: Over-indebtedness in Britain: Second follow-up report). It has also been assumed that approval rates are between 70-80% (ibid.) and a wage rate for loan processing employees of £10 per hour.

[76] Source: YouGov DebtTrack (November 2009)

Admin burdens: The admin burden associated with this article is the additional time taken in explaining application rejections to consumers as calculated above, i.e. £0.75m-£1.1m per year.

Article 17 – Assignment of rights

123. This article covers the assignment of rights and the notification to consumers of changes in the ownership of their debt. It states that:

- in the event of assignment to a third party of the creditor's rights under a credit agreement or the agreement itself, the consumer shall be entitled to plead against the assignee any defence which was available to him against the original creditor;
- In addition, the consumer shall be informed of the assignment referred to above, except where the original creditor, by agreement with the assignee, continues to service the credit vis-à-vis the consumer.

124. Current UK consumer credit legislation makes no reference to the concept of assignment of rights other than in the definitions of key terms as follows:

- Creditor – The person providing credit under a consumer credit agreement or the person to whom his rights and duties under the agreement have passed by assignment or operation of law, and in relation to a prospective consumer credit agreement, includes the prospective creditor.
- Debtor – The individual receiving credit under a consumer credit agreement or the person to whom his rights and duties under the agreement have passed by assignment or operation of law, and in relation to a prospective consumer credit agreement includes the prospective debtor.

125. The actual assignment or transfer of rights is a matter of general law principles. In the UK, the Law of Property Act 1925 requires firms to give written notice to their customers when they assign their rights in law to another party. The OFT's Debt Collection Guidance lists 'not informing the debtor when their case has been passed on to a different debt collector' as an unfair practice.

126. In terms of informing consumers of assignment, the CCD does not make clear whether that duty lies with the assignee, the assignor or both. The majority of respondents to the consultation had no concerns regarding which party provided notice of assignment, but most of the consumer groups and enforcement agencies considered that the assignor should provide notice to the borrower of any assignment of the creditor's rights to a third party. The Government considers it sensible to provide flexibility as to which party notifies the debtor.

127. Therefore, we do not believe that the position set out in article 17 is contrary to existing UK general law on assignment of rights. The majority of respondents to the consultation agreed with this.

Costs

128. As set out above, it appears that the majority of what is covered under this article is already practiced by lenders. Therefore, it is assumed here that there will be minimal impact on industry.

129. Industry cost estimates varied, with one lender estimating one-off system change costs of £0.1m per lender, with another suggesting there would be either minor or no systems impact at all.

130. It may be expected that there may be additional ongoing costs associated with notification of customers for some organisations that purchase debt. Survey data suggests

that only a very small proportion of those who are in structural arrears are aware of their debt being passed on to another company (just under 2% of all respondents, around 0.45m households), of which approximately one-third were notified of this change.[77]

131. If the remaining two-thirds of these customers, whose debts have been sold on, were notified of the change – at a cost of up to £2 per notification[78] – this would imply a total cost across all debt-purchasing firms of approximately **£0.6m**. Since we can only observe the current stock of those for whom their debts have been transferred, this will be treated as a one-off cost. There may be additional ongoing costs associated with notification of new customers.

Benefits

132. There may be some additional benefits to consumers from receiving a notification that their debt has been sold on to another organisation, but these are very difficult to quantify.

Scope: It is intended to apply this regulation across all consumer credit-related agreements, with the exception of second-charge mortgages (due to the ongoing review of regulation in this area).

This decision has been taken to ensure consistency in terms of the rights that consumers have for different types of unsecured lending product.

Admin burdens: The admin burden associated with this article is the cost of notification for those consumers whose debts have been sold on as calculated above, i.e. a one-off burden of £0.6m. As we do not have any data on the number of customers who would need to be notified on an annual basis, it is not possible to calculate the ongoing burden associated with notifying these customers.

Article 20 – Regulation of creditors

133. This article requires that Member States ensure that creditors are supervised by a body or authority independent from financial institutions, or regulated.

134. Given that the UK already has a long-standing (and recently bolstered) framework for the licensing and supervision of those offering consumer credit, by the Office of Fair Trading, it is not expected that implementation will result in any change being needed. Therefore, no costs will be incurred by industry and no benefits will flow to consumers as a result.

[77] Source: YouGov DebtTrack

[78] For the Consumer Credit Act 2006, it was estimated that the material costs of sending a paper statement to customers was around 30p (**http://www.berr.gov.uk/files/file38292.pdf**); this has been increased to reflect an element of the time associated with production of the notification

Summary: Analysis & Evidence

Policy Option:	Description:
Implementation of category 2	**Implementation of the Consumer Credit Directive – articles for which there are no options in implementation (category 2)**

COSTS

ANNUAL COSTS	
One-off (Transition)	**Yrs**
£ 20.1m-63.6m	10
Average Annual Cost (excluding one-off)	
£ 3.1m-7.7m	

Description and scale of **key monetised costs** by 'main affected groups' Implementation costs for lenders across different articles (**£10.1m-43.7m one-off; £1.3m-4.1m per year**); training on, and production of, SECCI (**£10m-19.9m one-off**); staff time dealing with customer queries on SECCI (**£0.9m per year**); lost interest income due to customer withdrawal (**£0.9m-2.7m per year**)

Total Cost (PV) **£ 47m-130m**

Other **key non-monetised costs** by 'main affected groups' Potential cost to lenders not already covered by Lending Code regarding termination of open-ended credit agreements; costs to lenders caught by 'credit intermediary' definition of notifying consumers

BENEFITS

ANNUAL BENEFITS	
One-off	**Yrs**
£ 25m-37.5m	10
Average Annual Benefit (excluding one-off)	
£ 46.4m-73.7m	

Description and scale of **key monetised benefits** by 'main affected groups' Switching to cheaper products as a result of improved information (**£24m-44m per year**); increase in cross-border purchases (**£6.5m-12m per year**); reduction in over-indebtedness (**£25m-37.5m one-off**); reduction in overdraft charges (**£15m per year**); saved interest costs due to early withdrawal (**£0.9m-2.7m per year**).

Total Benefit (PV) **£ 425m-670m**

Other **key non-monetised benefits** by 'main affected groups' Time saved by consumers in comparing credit products; benefits to reputable firms through increased business; greater transparency in dealing with credit intermediaries; increased notice for consumers about termination of open-ended credit agreements. Admin benefits are scored separately here.

Key Assumptions/Sensitivities/Risks Consumers need to switch (or at least threaten to switch) in order to realise many of the potential gains from increased competition; international suppliers must enter the UK market in order for consumers to be able to switch (or threaten to switch) to them.

Price Base Year 2009	Time Period Years 10	**Net Benefit Range** (NPV) **£ 295m-623m**	**NET BENEFIT** (NPV Best estimate) **£ 460m**

What is the geographic coverage of the policy/option?			UK	
On what date will the policy be implemented?			June 2010	
Which organisation(s) will enforce the policy?			OFT	
What is the total annual cost of enforcement for these organisations?			£ Negligible	
Does enforcement comply with Hampton principles?			Yes	
Will implementation go beyond minimum EU requirements?			No	
What is the value of the proposed offsetting measure per year?			£ N/A	
What is the value of changes in greenhouse gas emissions?			£ N/A	
Will the proposal have a significant impact on competition?			Yes	
Annual cost (£-£) per organisation (excluding one-off)	Micro **Unknown**	Small **Unknown**	Medium **Unknown**	Large **Unknown**
Are any of these organisations exempt?	No	No	No	No

Impact on Admin Burdens Baseline (2005 Prices) (Increase - Decrease)

Increase of	£ -	Decrease of	£ 26.5m	**Net Impact**	**£ -26.5m**

Key: **Annual costs and benefits: Constant Prices** | **(Net) Present Value**

Category 2 – changes to existing regime, no options available

Article 4 – Advertising information

135. This article concerns the standard information to be included in advertising for credit products and is intended to ensure that consumers are provided with sufficient information to enable them to compare different offers of credit. Article 4 is a maximum harmonisation provision, which means that Member States are not permitted to maintain or introduce national provisions other than those set out in the article. Specifically, the article requires that 'standard information' is to be provided where an indication of an interest rate or any figures relating to the cost of credit are included in an advertisement.

136. A standardised calculation can facilitate the comparison of different credit products, which can lead to benefits to consumers by identifying cheaper or more suitable loans for their circumstances. Recent research found that, in relation to credit cards, 13% of consumers relied on advertising information to make their choice (which was the third most popular source, after talking to someone in a bank/building society and the internet). However, over a quarter (27%) did not use any information to help them decide.[79]

137. Research conducted for the Credit Advertising Regulations in 2004 indicates that 84% of the population consider the APR an important factor in choosing which credit product to take, and from which lender. Similarly, survey work conducted by OFT in 2004 found that the interest rate was the most important factor for consumers in helping to decide which credit card to choose (selected by 47% of respondents);[80] more recent research conducted in relation to credit cards found that a low interest rate was the second-most popular feature of a credit card (selected by 25% of respondents).[81]

138. As evidenced by the survey data in the section above, insufficient, inaccurate or incomprehensible information is a key concern for consumers in purchasing cross-border financial services within the EU. Allied to this, problems around financial capability among the UK population means that improved standardisation of information across a range of financial products can only improve the ability of consumers to compare them – for example, OFT survey data found that over two-thirds of consumers (68%) did not compare the credit card they acquired most recently with any others.

139. The following items are to be included as part of the standard information at all times:

- Borrowing rate, whether fixed or variable, or both
- Charges included in the total cost of credit
- Total amount of credit
- APR

140. Other items may also be required where applicable:

- Duration of the credit agreement
- Cash price/advance payment for goods or services in case of credit, in the form of a deferred payment
- Total amount payable and amount of instalments

[79] 'Credit and store card research', TNS-BMRB (2010)
[80] 'Credit card survey', OFT (2004)
[81] 'Credit and store card research', TNS-BMRB (2010)

141. The standard information is to be given in a clear, concise and prominent way, by means of a representative example.

Costs

142. Compared to existing information requirements under the Consumer Credit (Advertising) Regulations 2004, the manner in which information is presented under article 4 is less prescriptive (and therefore less onerous) for lenders. However, it is likely that most lenders would refresh their advertising on a regular basis in any case and changes due to implementing elements of article would be absorbed into that budget – this would imply no additional costs.

143. There may be costs associated with replacing standard leaflets in branches, though lenders should have plenty of time to run down existing stock, which should minimise any potential recall and reprinting costs. Lastly, there may be costs associated with redesigning templates and/or forms for internet and online channels – again, it is likely that these would be absorbed into budgets for more routine updates. In their assessment of costs associated with article 4, Copenhagen Economics also noted that one-off costs of adapting current systems and procedures were likely to be minor, as UK lenders already comply with more prescriptive advertising requirements and refresh their advertising on a regular basis.

144. From discussions with industry, it would seem that the standard information is already included with advertising for the vast majority of credit products; it is expected that no additional products will be brought under the provisions of this article.

145. Cost estimates provided by industry vary from zero to £1.3m for one-off costs and ongoing annual costs of £70,000. However, for the reasons set out above, we believe that implementation would not significantly increase costs above that for budgets associated with regular updates to advertising.

146. One respondent to the consultation raised the issue of impact on advertising media and the potential for distortion of expenditure between different types of media. It is not clear whether there may be an overall reduction in the level of advertising expenditure as a result of implementation, but we would not expect this to occur. With regards to the second of these issues (distortion between spending by media channel), we would not expect this to have an overall net impact, as it would effectively be a transfer of advertising spending between different media channels.

Benefits

147. As part of the assessment for the Advertising Regulations 2004, it was estimated that providing consumers with an effective means of comparing loans could lead to savings of £41m per annum as a result of identifying cheaper/more suitable loans for their circumstances.[82] Although these benefits resulting from the implementation of those regulations have, in theory, been realised, it is possible that consumers may wish to take advantage of easier comparability for credit products across the EU.

148. According to a Eurobarometer survey, 31% of UK respondents would consider obtaining a financial service from a firm located in another Member State[83]. Assuming that 15% of consumers already have made a cross-border purchase of financial services[84], this would imply an additional 16% willing to do so. In addition, information problems were identified as a barrier to cross-border purchase of financial services by a significant proportion of

[82] Advertising Regulations RIA, 2004
[83] Special Eurobarometer 230: 'Public Opinion in Europe on Financial Services'
[84] 85% of consumers indicate they have never purchased financial services from firms located in another Member State (source: Special Eurobarometer 230)

consumers – between around 20% and 30%, based on the survey data set out earlier. If similar benefits could be achieved as for domestic switching, this could imply potential consumer benefits of around **£6.5m-£12m per year**.

Scope: It is left up to each Member State to decide for which products to require the inclusion of an APR in advertisements.

The majority of respondents agreed that the advertising provisions of the Directive should apply to the same range of credit agreements as covered by the 2004 regulations. Nevertheless, some respondents considered that these should not apply to loans above £60,260, as consumers borrowing such amounts were "more financially sophisticated" and "took independent advice before entering into an agreement". A consumer group considered that business lending and overdrafts should be included, as "relatively small-scale, self-employed businesses should be covered" and a lack of an APR can "mislead consumers on the implications and consequences of an overdraft and does not enable them to effectively compare it to other products".

It has been decided to apply this article to all consumer credit-related agreements, with the exception of second-charge mortgages and small-business lending (up to £25,000). The exemption for second-charge mortgages is due to the ongoing review of regulation in this area, while advertising for small-business lending is typically very different to consumer credit advertising.

Admin burdens: In relation to this article, there is likely to be a decrease to burdens under the Consumer Credit (Advertisement) Regulations 2004 – one burden is being removed altogether[85], while another is being altered.[86] The burden that is being removed will lead to a reduction of **£1.3 million per year**, while the burden being altered should not have any material impact on the burden of the obligation.

149. An issue related to article 19 (APR calculation) is relevant here, as advertisements where the amount of credit is unknown need to have the amount of credit that the representative example will be based on specified. Essentially, a similar amount of €1,500 (£1,200) could be used, or lenders could be given discretion for deciding the most appropriate amount for the calculation.

150. The majority of responses to the consultation disagreed with the proposal to use €1,500 for the representative total amount of credit. While it was acknowledged that this amount might be appropriate in some situations, many industry respondents considered this amount to not be representative of the amounts they usually loaned and expressed concern that advertising based on that amount would be "unhelpful", "confusing" or even "misleading". Most consumer groups and enforcement agencies also rejected the €1,500 amount, taking the view that where the amount of credit was likely to be different, a "more representative amount" should be used. Many industry respondents preferred having the flexibility of determining the representative amount themselves, based on their own likely lending amounts.

151. It is recognised that the representative total amount of €1,500 does not work for all types of credit products. It has therefore been decided that this amount should only be used for calculating the representative APR in the case of running account credit. However, in the case of fixed-sum loans, the example given should be representative of the amount actually lent under the agreements the advertiser expects to be entered into as a result of the advertisement.

[85] ID 22041, with a value of £1,326,043
[86] ID 20275, with a value of £6,683,482

Article 5 – Pre-contractual and contractual information

152. Article 5 sets out pre-contractual information requirements for those consumers considering entering into credit agreements. It is very prescriptive, given that it mandates the use of a standardised form for providing pre-contractual information to customers, the Standard European Consumer Credit Information (SECCI) form. Part of article 5 (article 5.6) confers a duty on providers to provide 'adequate explanations' to consumers regarding credit agreements, but is considered separately, as there is more considerable variation in terms of the cost impact.

153. The information itself seems to be closely aligned with the UK's own pre-contractual information requirements, as set out in the Consumer Credit (Disclosure of Information) Regulations 2004. This was based on earlier rules governing the form and content of contractual information as set out in the Consumer Credit (Agreements) Regulations 1983, as amended in 2004. The Disclosure Regulations are prescriptive about the content of the information to be given, but not the ordering, whereas the Agreements Regulations are more prescriptive about the order of information, including the setting out of 'key information' boxes and headings.

154. Evidence from a recent Eurobarometer survey[87] indicates that the vast majority of UK consumers would consider the introduction of a standardised information sheet in relation to financial services to be very helpful in comparing prices and offers – 53% considered this very useful, 34% fairly useful and only 7% considering it to be not useful.

155. Given that this is a maximum harmonisation Directive, it is not possible for a Member State to require creditors or credit intermediaries to provide more or less pre-contractual information that that specified in article 5. There is a little scope for variation in terms of the language used in the SECCI form and the precise way in which the required information will be presented. However, this variation will not be considered as discrete options, but is reflected in the range of costs set out below.

156. Although there may be some flexibility in terms of the discretion that Member States/lenders are allowed over the precise final wording used in SECCI, the cost impact of this is unlikely to be significant. Discretion over language could potentially create scope for customer confusion across products from different lenders, but much of the structure of the SECCI is not flexible (e.g. information presented in the same order, under the same headings/sections), which reduces the possibility of this.

Costs

157. Given that the list of information required under article 5 is similar in content to the list of information currently required under the 2004 disclosure regulations, the cost implications of introducing SECCI are likely to be quite low. There are front-end systems that will require changing to account for different products, for which a SECCI will have to be produced, and one-off costs primarily attributable to training requirements around new procedures to implement the requirements, as well as training for staff in order to explain the content of the new form. Industry estimates for these one-off costs vary from £0.1m-£1.05m for a large lender, which would imply industry-wide costs of **£1m-£10.9m**.

158. Costs may be incurred from the additional paper required from the production of SECCI and ongoing staff time spent handling customer queries associated with SECCI. Industry estimates for the one-off elements of these costs amount to £0.9m for a large lender, which would imply industry-wide upfront costs of up to **£9m**. It has been suggested by industry

[87] http://ec.europa.eu/public_opinion/archives/ebs/ebs_298_en.pdf

stakeholders that ongoing costs represent around 10% of these one-off costs, which would imply industry-wide ongoing costs of **£0.9m per year**.

Benefits

159. Research conducted for DTI for the Disclosure of information regulations in 2004[88] indicated that 84% of consumers found language used in paperwork for credit agreements confusing. As a result of implementation, the standardised format of the SECCI should mean that consumers will be further advantaged in their ability to compare information across products, helping them to make informed decisions.

160. The provision of clear, comparable information – that is standardised across credit products throughout the EU – will raise consumer confidence in comparing and choosing credit products, through increased transparency of charges as well as terms and conditions. This should widen the potential choice set for consumers, resulting in keener competition between potential lenders and also reduce sub-optimal borrowing choices.

161. The provision of clearer information will allow consumers to (should they wish to) shop around and potentially achieve a better deal prior to entering into an agreement, including switching to cheaper products. For the Disclosure of Information Regulations in 2004, it was estimated that consumer savings from switching to cheaper products could be up to £153 million per year.

162. In a 2002 paper, the FSA estimated that credit card customers could save almost £140 per year by switching to the cheapest deal[89], based on an average credit card balance of £1,300 and a difference between average and cheapest credit card interest rates of 10.3%. If we update this figure for more modern statistics – an average credit card balance of £1,800[90] and a difference in interest rates of almost 12%[91] – this would suggest an average annual saving in repayments for a credit card customer of approximately £120.[92] Assuming that there are currently 34m active accounts[93] (of which around 70% pay off their balance in full every month[94]), that switching is around 7% per year[95] and that those switching did not maximise the gains available to them[96], this would suggest average consumer savings of **£24m-£44m per year**.

163. There may also be benefits to consumers of being more aware of costs associated with their borrowing as a result of improved information. This might help them to improve the management of their debts and avoid the consequences of over-borrowing, such as financial distress and consequent impacts on ill health or relationship breakdown. Whilst it is difficult to quantify these costs, a recent study by LSRC estimated costs associated with debt problems to be in excess of £1,000 per individual.[97]

164. On the basis of recent report analysing levels of over-indebtedness in Britain indicates that between 10% and 15% of households could be considered to be 'over-indebted'.[98] If

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[88] 'Consumer awareness of credit issues', September 2003 (MORI)
[89] **www.fsa.gov.uk/pubs/occpapers/OP19.pdf**
[90] Average amount outstanding per active account = £1,839 in 2009 (based on BBA statistics)
[91] Average effective interest rate for credit cards = 18.4% (Bank of England, Jan 2010); cheapest credit card interest rate = 6.7% (Moneysupermarket.com, Mar 2010)
[92] In order to repay balance over 12-month period (assuming no additional spending): at 18.4%, average monthly repayment = £168; at 6.7%, average monthly repayment = £158
[93] Source: British Bankers' Association, as at January 2010
[94] 'Credit and store card research', TNS-BMRB (2010); UKCA, Appendix 4 of the Response to BIS Credit & Store card Consultation: GfK Quantitative Consumer Research Tabulations, (January 2010)
[95] 'Credit and store card research', TNS-BMRB (2010)
[96] Consumers appropriated 28-51% of maximum gains available to them (source: **http://ccpweb.mgt.uea.ac.uk/publicfiles/workingpapers/CCP07-6.pdf)**
[97] **http://www.lsrc.org.uk/publications/Impact.pdf**
[98] 'Over-indebtedness in Britain: Second follow-up report', BIS (2010)

this number could be reduced by only 1% as a result of implementing this Directive, there could be potential one-off benefits to the economy of **£25m-£37.5m**.[99]

Scope: The majority of respondents agreed with the proposal to allow lenders the flexibility to provide pre-contractual information either via the SECCI or under the existing Disclosure of Information rules for small-business lending, second-charge mortgages and agreements over £60,260. Some enforcement agencies considered that this proposed flexibility should not be allowed and that the SECCI "should apply across the board", contending that a single regime promoted consumer understanding and facilitated product comparison. A legal respondent also expressed concern regarding the maintenance of a "dual regime". Some industry respondents considered that customers should have the choice of receiving the SECCI for loans above £60,260. A significant number of respondents considered that pawnbroking should be excluded from the requirements to provide information via the SECCI, with some contending that pawnbroking customers were repeat customers who "readily understood" the nature of the agreement and therefore did not require the SECCI. One industry respondents also thought that agreements under £160 and interest-free loans should be exempt.

It has been decided that new regulations will apply to most regulated consumer credit agreements, with the exception of second-charge mortgages. In relation to small-business lending below £25,000 and loans with a value in excess of £60,260, creditors may provide pre-contractual information either by using the SECCI or continuing to comply with the existing Disclosure Regulations. In the case of pawnbroking, this article will only apply to new customers, those who have not used a pawnbroker within the previous 3 years, or customers who choose to request a copy of pre-contractual information. The exemption for second-charge mortgages is due to the ongoing review of regulation in this area.

Admin burdens: In relation to this article, there is likely to be a decrease to a burden under the Consumer Credit (Disclosure of Information) Regulations 2004.[100] Although implementation of the Directive will not result in any change to the information that needs to be displayed in pre-contractual information, it will be more prescriptive and hence should require less legal advice on whether the format of the information is compliant with UK legislation. With that in mind, a 25% reduction in the cost of 'external services' associated with this obligation has been assumed – this leads to an overall reduction in admin burden of **£24.8 million per year**.

Articles 6 & 12 – Overdrafts

Light-touch regime

165. The Directive segments overdrafts for special regulatory treatment in terms of information provision, dependent upon the precise terms of repayment of the overdraft credit agreement. The Directive differentiates between overdrafts repayable on demand and within 3 months versus those repayable within one month, with an exemption permitted for overdrafts repayable within a month. A number of respondents agreed with the proposed approach, but some considered that overdrafts repayable within one month should be exempt. Other respondents considered it unfair and anti-competitive to impose regulations on some lenders, while simultaneously applying a light-touch approach to bank overdrafts. However, it has been decided to apply the Directive's lighter-touch regime for overdrafts to all overdrafts (including those repayable within one month).[101]

Inclusion of APR

[99] Based on evidence that there are 25 million households in the UK (Source: ONS Social Trends 39)
[100] ID 22319, with a value of £111,269,223
[101] This includes 'non-bank' overdrafts and, while there is no evidence that 'non-bank' overdrafts exist in the UK, it is felt that prudent to make provision for the possibility in case the position changes in the future

166. Article 6 (pre-contractual information on overdrafts) gives the option to Member States to require an APR figure to be included with the offer of an overdraft to customers. Since it is felt that an APR is not particularly representative of the costs to consumers for overdrafts, it is intended not to introduce this requirement. However, the Directive nevertheless requires the inclusion of a figure for the Total Cost of Credit in contractual information relating to overdrafts.

167. Article 10 set out the contractual information requirements for overdrafts.

168. A number of respondents agreed with the proposal not to require APRs to be shown in advertisements related to overdrafts, with some industry respondents questioning the necessity of providing the total cost of credit to customers as well. It was contended that having to show the total cost of credit would introduce a significant cost to lenders and be of little use and potentially misleading to consumers. One respondent considered that the ongoing nature of overdrafts, the short periods for which they are outstanding and differing consumer behaviour made it impossible to decide on the appropriate assumptions necessary to make an APR calculation. In contrast, an enforcement agency and consumer group considered APRs were increasingly important in terms of cost transparency, contending that – as APRs were required for other short-term lending, such as payday loans – they should also be required for overdrafts.

169. It has been decided to proceed with the proposed approach – i.e. not to require overdraft providers to indicate an APR in advertising, pre-contractual or contractual information. However, an example illustrating the total cost of credit to be provided in the agreement will be required.

Overrunning

170. Article 12 covers obligations to provide regular statements and to inform borrower is about increases in interest rates and charges. It was also proposed that this information be provided to consumers in periodic statements (at least annually) to account holders. Some respondents to consultation noted that overrunning appeared on regular current account statements anyway.

171. Article 18 covers tacit overdrafts and, in addition to requiring information to be provided about the costs of overdrawing without an agreed overdraft limit or of exceeding an agreed overdraft limit, it also sets out the information which must be to provided in the event that a consumer does overdraw in these circumstances as well as a requirement to provide regular information about changes to interest rates and charges.

172. It has been decided that information about the charges which would apply to overrunning should be included in account opening information, where an agreement would allow a consumer to overdraw on a current account without an authorised overdraft agreement.

173. In broad terms, there are no significant changes imposed on UK creditors by implementation of the Directive.

Costs

174. Therefore, there will be some imposed changes (and hence costs) for business through notification of customers regarding their terms and conditions for overdrafts, but it is likely that most of these can be absorbed into regular customer communications (e.g. account opening agreements and regular statements). Since there is limited variation in the implementation of this article, no ‘options’ are considered here.

175. Industry estimates of costs associated with implementation for articles 6 and 12 are £0.2m-£1.6m for a large lender, which would imply industry-wide costs of **£2.1m-£16.7m**. As it has been suggested by industry stakeholders that ongoing costs represent around 10% of these one-off costs, this would imply industry-wide ongoing costs of **£0.2m-£1.7m per year**.

Benefits

176. Since customer awareness of the terms and conditions of their overdrafts is likely to be marginally increased, this may result in a reduction of overdraft-related fees (e.g. overdraft excess charges), which OFT recently estimated to be around £1.5 billion per year.[102] Even if this were only reduced by 1%, this would amount to consumer savings of **£15m per year**.

Scope: It has been decided to apply the Directive's lighter-touch regime for overdrafts to all overdrafts (including those repayable within one month),[103] not to require overdraft providers to indicate an APR in advertising, pre-contractual or contractual information[104] and – in recognition of the view that lending to small businesses up to £25,000 is often similar to private borrowing and that such borrower are often no more financially literate than average consumers – the provisions on overrunning will also be applied to such business lending.

Admin burdens: It is understood that current practices regarding notification of consumers in relation to overdrafts already entails much of the information covered here (even though it is not statutorily required). In any case, it is expected that the majority of the information now required by statute should be able to be integrated into existing communications. Therefore, it should not present a significant increase in administrative burdens for lenders.

Article 11 – Borrowing rate information

177. The Directive contains certain requirements dealing with the provision of information to a debtor once an agreement is entered into. The relevant provisions of the Directive are contained in article 11, which concerns the provision of information relating to changes in the borrowing rate.

178. Where applicable, the article states that consumers should be informed of any change in the borrowing rate before the change enters into force. The information shall state the amount of the payments to be made after the entry into force of the new borrowing rate and, if the number of frequency of the payments changes, particulars thereof.

179. Beyond the exact time period in which consumers should be informed of changes, there is very little scope for options in implementation of this article.

180. The Directive requires that notice of a change in the borrowing rate should be given **before** the change enters into force. There is no minimum specified period; existing UK legislation[105] specifies that at least 7 days' notice must be given. This would seem to leave a choice between retaining the existing 7-day rule or allowing lenders to determine an appropriate time 'before' the change takes effect (e.g. to allow for regular statements to be used for this purpose).

181. The majority of respondents (a mix of consumer bodies, enforcers and some individual lenders) believed that the existing rules (for 7 days' notice) should be retained, as it is well understood and provides legal certainty. Other felt that retain existing rules would be

[102] 'Personal Current Accounts in the UK: An OFT market study', July 2008
[103] This includes 'non-bank' overdrafts and, while there is no evidence that 'non-bank' overdrafts exist in the UK, it is felt that prudent to make provision for the possibility in case the position changes in the future
[104] However, an example illustrating the total cost of credit to be provided in the agreement will be required.
[105] Regulation 2 of the Consumer Credit (Notice of Variation of Agreements) Regulations 1977

unnecessary given the more general rules in the Unfair Terms in Consumer Contracts Regulations and Consumer Protection from Unfair Trading Regulations, in respect of changes that would work to the consumer's disadvantage.

182. On balance, it has been decided not to retain the existing 7-day notice period, given that the Directive does not prescribe such a limit and the more general effect of other consumer protection legislation. On this basis, the regulations will be amended to specify that notice should be given before any change takes effect. This will provide for an accurate transposition, while providing lenders with sufficient flexibility to determine the appropriate time period required for notification.

Costs

183. There will some limited costs to business of implementing this article through increased contact with customers about changes to their borrowing rates, but this is likely to be relatively infrequent. Further, notification of this information could be incorporated into more regular channels of communication with customers (e.g. statements). Therefore, we have assumed here that there are no additional costs associated with notification under article 11.

184. In relation to the notice period, it is likely that the chosen approach will be at least cost-neutral for lenders, given there is no substantive change in the requirement to provide information and the requirement has become less prescriptive. This suggests that lenders may be able to make more use of regular statements for this purpose.

185. Industry estimates of costs associated with implementation vary from zero to £0.6m per large lender. Given the final choice regarding the notice period, this would seem to suggest that overall cost for implementing this article will be zero.

Benefits

186. As was calculated in relation to article 5 above, there could be significant benefits to consumers (£25m-£37.5m one-off benefits; £24m-£44m annually) if they were to take action as a result of receiving such information. However, in the case of this article, OFT research suggests that over 75% of credit card holders do not know what APR applies to their card.[106] Furthermore, switching rates in relation to financial products is not particularly high (9-10% of consumers having switched in the last 2 years)[107], which might indicate that not many consumers would necessarily benefit.

187. Given the changes in the notice period, there is a risk that, under certain circumstances, consumers may have less time to respond to changes in their borrowing rate. However, given the protections mentioned in general consumer protection regulations, where such changes result a worse outcome for consumers, this risk is likely to be heavily ameliorated.

Scope: The overwhelming majority of respondents supported that existing regulations should be amended in such a way that the existing coverage of these regulations would be maintained and that the amendments should not apply only to agreements within the scope of the Directive. Therefore, the amended regulations will continue to apply to agreements currently in scope, including business lending where the credit limit does not exceed £25,000.[108] Such a change ensures consistent treatment for small businesses and individual consumers. Additionally, some lenders are used to having distinct regimes for business lending that are regulated under the CCA and those that are not, and would prefer to keep this straightforward divide.

[106] **http://www.oft.gov.uk/shared_oft/reports/financial_products/oft709.pdf**
[107] Flash Eurobarometer 243 (2009)
[108] This does not include hire purchase, as that is not relevant in this context.

Admin burdens: In relation the requirement in the Consumer Credit (Notice of Variation of Agreements) Regulation 1977, a requirement of serving notice of variation not less than 7 days before the variation comes into effect has been changed so that notification merely has to occur before the change comes into effect.[109] Similarly, a requirement on publishing notice in daily newspapers has been eased and notice is now only required to be given in public (which could potentially be through a notice in a bank branch).[110] As a result, it is likely that these requirements have become less onerous for lenders to fulfil their obligations, though we do not have more precise information to be able to quantify this reduction in burden.

Article 13 – Open-ended credit agreements

188. This article concerns open-ended credit agreements – such as credit cards, store cards or payday loans – and the ability of consumers and creditors to terminate them. This varies for consumers (able to terminate at any time, with a maximum of one month's notice) and creditors (minimum of two months' notice). Where creditors terminate the right to draw-down on an open-ended credit agreement, consumers must be informed in advance, where possible, or at the latest immediately thereafter.

189. UK legislation will need to be altered to reflect these changes – there will be a new, specific provision in UK law to give effect to the requirement that a consumer can terminate an open-end agreement at any time, unless the parties have agreed on a period of notice, that the consumer cannot be required to give more than one month's notice and that the creditor must give at least two months' notice.

190. There is no real flexibility with this article and it will therefore be transposed directly into UK law – as a result, there are therefore no options for implementation to consider.

Costs

191. In practice, there should be little cost impact on most lenders, given that there are similar provisions in the Lending Code regarding terminations. There may, however, be some impact on non-subscribers to the code.

192. Industry cost estimates of implementation related to article 13 range from £0.1m per lender to minimal or zero cost impact. Given the analysis above, it seems likely that the cost impact will be negligible.

Benefits

193. Similar to above, given that similar provisions already exist in the Lending Code, there are unlikely to be any significant impact on benefits to consumers. There may be some benefits accruing to those customers whose credit lines may currently be withdrawn with minimal or no notice that would receive some (advance) notification as a result of implementation.

Scope: It has been decided to apply this article to all types of consumer credit-related lending, with the exception of second-charge mortgages.[111]

Admin burdens: As this article primarily concerns the right related to the timing of a notification, rather than an obligation to send a notification, there is no admin burden associated with implementation of this article.

[109] ID 21606, with a value of £495,048
[110] ID 21614, with a value of £7,099
[111] This article is not relevant to pawnbroking and hire purchase

Article 14 – Right of withdrawal

194. This article covers the right of consumers to withdraw from credit agreements and sets out responsibilities regarding giving notice and returning money. The consumer will have the right to withdraw from a credit agreement within 14 days but not to return the goods in the case of a linked credit agreement. However, if the consumer wishes to return the goods and the supplier is willing to take them back, the legislation will not prevent this.

195. It is not proposed to define more closely when the 14-day period starts – when the contract is concluded may differ, depending on the type of credit agreement and it should be clear in the circumstances. There will be a business relationship between supplier and creditor and it should not be necessary for the Government to interfere in this. As to whether the supplier chooses not to release the goods until the 14-day period has passed, this is a decision for him to make; for some types of goods it may well be a viable option.

196. The Directive provides that the point for determining whether notice of withdrawal is within the 14 days is the despatch of the notice by the consumer, rather than receipt by the lender. Several respondents commented that satisfying the requirement to give notice should be dependent on it being received by the creditor, as the creditor may never receive the notice and the consumer could claim he had sent it, when he had not. Some industry respondents expressed concern about possible abuse of the right by consumers – for example, some might try to use it as a cheaper form of short-term credit or (if the agreement was linked to the purchase of expensive goods) might want to return the goods which would then have depreciated.

197. UK consumer credit law has provided for a right of withdrawal since 1974, but this only applies in certain situations, such as those where a credit agreement is concluded at a person's home or concluded via distance-selling methods (e.g. phone or internet). Implementation of this article will therefore require changes to existing legislation. However, there is little scope for variation in how this is implemented, hence there are no options considered for this article.

198. Figures provided to BIS suggest that the proportion of loans where a 14-day right of withdrawal is not already applied (on either a statutory or voluntary basis) is approximately 3%. However, evidence suggests the incidence of consumers wishing to exercise their right of withdrawal (where this already applies) is currently only 2%. Even if this might be expected to rise (say, to around 5%) if this right were broadened to all situations and placed on a statutory footing through implementation of the Directive – and as a result consumers were more aware of this right – this would suggest that the proportion of loans on which a 14-day right of withdrawal is not already offered, and such a right might be expected to be exercised, amounts to 0.05-0.15%.

Costs

199. Through informal consultation, one bank has assessed the cost impact of this article as 'neutral', while another stated that such action was already part of current policy, therefore there would be no effect. The extent to which this is true across the industry will determine the overall cost of implementation.

200. Based on estimates provided by industry, one-off costs associated with system changes vary between £0.2m-£0.8m for a large lender, which implies industry-wide one-off costs of **£2m-£8m**. Ongoing costs are estimated by industry to be around £0.05m, which implies industry-wide costs of **£0.5m per year**.

201. If, as a result of implementation, there is an increase in the proportion of loans upon which consumers choose to exercise their right of withdrawal (as set out above), this will lead to a loss in interest income for lenders on those loans which are cancelled. If it is

assumed that the average personal loan is worth £7,817 (with an average term of 5 years)[112] and the average interest rate is 12.69%[113], this would imply total interest income of £2,780 per loan. If it is assumed that there are around 650,000 unsecured loans per year[114], this would imply a total loss in interest income on loans, due to consumers exercising their right of withdrawal, of **£0.9m-£2.7m per year**.[115]

202. However, this may either have no net impact (if the lender is able to make a new loan as a result of the consumer cancelling the agreement) or even potentially a net positive impact, if the now-cancelled loan would have resulted in default under the previous regulatory framework.

Benefits

203. As a result of implementation, consumers will have the right to withdraw from a credit agreement under a wider range of circumstances than possible under current UK law. This will result in a saving to those consumers who do choose to exercise their right to withdraw in the form of lower interest payments over the life of the loan. These will be equal to the lost interest income calculated above (i.e. **£0.9m-£2.7m per year**).

204. There may be additional benefits of reducing overall indebtedness if consumers use the right to withdraw in deciding not to proceed with loans they cannot afford, or to find loans that are more suitable for their circumstances. As set out earlier under article 5, if these could be avoided, this could represent significant benefits to the overall economy.

205. However, there could also be a potentially negative impact for consumers if, as an unintended consequence of the implementation of this article, retailers might wait until the 14-day period has expired before allowing goods to be released, where credit agreements are used as a deferred payment for delivery of goods or services.

Scope: Some industry respondents did not want the right of withdrawal extended to hire purchase agreements, citing an umber of difficulties with this – what would happen to the goods, who had title to them during the withdrawal period and how the credit aspect of the agreement would be divided from the supply aspect. On the other hand, several consumers groups and enforcement agencies supported the proposal. A few respondents commented on whether this article should be applied to pawnbroking – it was argued that it should not due to the nature of the transaction, but another saw no reason why pawnbroking customers should not have the same rights as users of other types of consumer credit. There was little comment on the extension to agreements below £160. Several consumers groups and enforcement agencies considered that this article should be extended to loans above £60,260, but others opposed this. A number of industry respondents considered that the right of withdrawal should not be extended to loans up to £25,000 for small businesses – reasons given were the greater sophistication of business customers, the potential delay in provision of goods to some businesses. In contrast, several enforcement agencies and consumer groups considered that the right to withdraw should be extended to small-business loans.

A clear majority of respondents were opposed to applying the right of withdrawal to business lending arrangements. Similar arguments were advanced as to the distinct nature of this type of debtor, while one lender argued that business customers often require a flexible approach, which would not fit well with the right of withdrawal requirements. In contrast, one consumer

[112] Figures provided by British Bankers' Association
[113] Based on Bank of England data for advertised interest rates on a representative personal loan of £5,000 (series: IUMBX67, average for 2009)
[114] Based on 4% of the UK's 25 million households applying for a personal loan, of which around two-thirds are rejected (source: 'Over-indebtedness in Britain: Second follow-up report)
[115] i.e. 650,000 loans, multiplied by 0.05-0.15% multiplied by £2,780

body thought that the right should apply on the basis that such types of consumers should still benefit from the protection of a cooling-off period.

It has been decided that consumers taking out hire purchase or pawnbroking agreements should not have lesser rights than consumers taking out other types of unsecured credit agreements – for example, treating hire purchase differently to conditional sales agreements would cause customer confusion and detriment, as consumers may not appreciate any difference in their rights. In addition, the right of withdrawal has been applied to loans below £25,000 to small businesses, as it was felt that such small businesses are more akin to consumers in the way that they behave and in their financial needs. However, the right of withdrawal has not been extended to loans above £60,260. As before, second-charge mortgages have been excluded.

Admin burden: In relation to giving notice of withdrawal, there is likely to be a decrease in relation to an existing burden under the Consumer Credit Act 1974.[116] As a result of implementation, this relevant burden will no longer be applicable to those types of lending within scope of the Directive. Given that unsecured lending accounts for around 20% of gross unsecured lending as a whole, it could be assumed that this burden will also reduce by 20%, which would lead to a reduction in the admin burden of **£380,000 per year**.

Article 19 – APR calculation

206. This article sets out the requirements on how the Annual Percentage Rate of Charge (APR) must be calculated for a number of different credit products across the EU. Approximately 84% of the UK population consider that APR is an important factor in terms of deciding both which credit products to buy and from which lender.[117] In 2007, a survey conducted for Which? found that 51% of consumers believed that comparing the APR was the best way of determining which credit card was cheapest.[118] However, the most important aspect of the card for a consumer's choice will be informed by the way in which they use their card, so the APR will not necessarily be the most important item for every consumer.

207. The methodology for the proposed calculation is the same as that followed in the UK; however, the assumptions provided where credit agreement terms have not been finalised appear to be less sophisticated than those currently used in the UK and do not appear to cater for as wide a range of situations. That said, these simpler assumptions appear to produce the same result in terms of calculated APR for the majority of cases. The European Commission has also recently published a study which helps to explain the APR calculation and its implications.[119]

Costs

208. When calculation of APR was standardised as part of the Advertising Regulations 2004, it was estimated that lenders would incur a one-off transitional cost of £40m (e.g. staff training, management and legal costs). However, the environment under which these changes were made is significantly different to the environment under which this article will be implemented.

209. Given that standardisation has already been achieved for APR calculation, the costs associated with a change to this standardisation should be an order of magnitude smaller. This would seem to be reflected in industry cost estimates – one-off system change costs of

[116] ID 25331, with a value of £1,908,595
[117] Advertising Regulations RIA, 2004
[118] 'Response to super-complaint on credit card interest rate calculation methods by Which?', OFT (2007)
[119] 'Study on the calculation of the Annual Percentage Rate of Charge for consumer credit agreements' (2009)

between £0.6m-£1.8m for a large lender. This implies industry-wide one-off costs of **£6m-£19m**. As per suggestions from industry stakeholders, if it assumed that ongoing costs represent around 10% of these one-off costs, this would imply industry-wide ongoing costs of **£0.6m-£1.9m per year**. On the other hand, nothing in responses to the consultation demonstrated that lenders would be required to do anything different other than to assume credit ceiling of £1200 instead of £1500 in the case of running account credit and it is therefore questionable whether there would be any cost

Benefits

210. Similar to the benefits calculated for article 4 above, there will be benefits for consumers in providing an effective means of comparing loans that could lead to savings as a result of identifying cheaper/more suitable loans for their circumstances.

Scope: It is intended to apply the new assumptions across all consumer credit related-agreements, with the exception of second-charge mortgages. It was felt that, in order to make it easier for consumers to make comparisons across different types of credit product, the method of calculation for the APR would need to be consistent. As before, second-charge mortgages are excluded due to the ongoing review of regulation in this area.

Admin burden: There are no additional information requirements associated with this article, hence there are no additional admin burdens.

Article 21 – Obligations of credit intermediaries

211. This article confers a requirement on credit intermediaries to disclose their ties with creditors, to agree with the customer, and disclose on paper, any fee and to communicate to the creditor any fee payable by the consumer for calculation of the APR. The majority of those who responded agreed with the proposals for implementing this article, although a few thought the legislation should define in detail exactly what the intermediary had to disclose in what situations.

212. The definition used in the Directive ('credit intermediary') is not used in the Consumer Credit Act 1974 (CCA); however, the term 'credit broker' is used. There are several differences between these two terms, including:
- credit brokerage does not require a fee to be paid, whereas a credit intermediary must charge a fee;
- credit brokerage not only applies in business to consumer transactions but also in business-to-business transactions below £25,000;
- credit brokerage applies not only to introduction of persons desiring to obtain credit to persons supplying credit, but also to the introduction of persons desiring to obtain goods on hire to persons carrying on a hire business

213. There are currently no requirements in the CCA regarding the disclosure by credit brokers of ties with creditors, nor explicit requirements in the CCA for a credit broker to disclose any fee payable by the consumer for the broker's services and agree it on paper (or a durable medium). There is also no explicit requirement for the broker to inform the lender of any brokerage fee paid by the consumer.

214. In summary, it does not appear that any of the provisions in article 21 are currently explicit requirements in UK law, although it does appear that, to some extent, actions required by article 21 may already occur in practice. Explicit requirements would need to be introduced to fully implement the Directive.

215. The distinction between these two definitions is potentially relevant under article 21 in terms of the number of additional businesses that would fall within a changed definition. The

two definitions will cover the same businesses to a certain extent, but it is unlikely that all businesses that could be considered 'credit intermediaries' under the Directive's definition would also be considered 'credit brokers' under the CCA definition. Indeed, evidence on OFT consumer credit licences suggests that there are around 3,100 licences attributed to 'brokers and intermediaries' and around 2,600 to solely 'credit brokers'.

216. The approach of relying on the existing definition of credit brokerage (whether unchanged or slightly extended) to cover the new requirements on credit intermediaries would create a homogeneous group to which the same requirements applied; this has advantages for consumers, business and the regulator. However, it is likely to mean that some businesses that are not currently credit brokers would fall within that definition and therefore be caught by all the requirements currently attached to credit brokers.

217. We have discounted the option of replacing our existing definition of credit brokerage with the Directive's definition of credit intermediary and applying the new definition to existing and new requirements. This option is not attractive as credit brokerage is used is several contexts in the CCA and has an entrenched meaning. To remove it would be difficult, could impact on non-CCD areas and could have unintended and undesirable consequences.

218. There was no clear majority of support for using the Directive's definition of 'credit intermediary' or an extended definition of the CCA term 'credit broker', incorporating the definition of credit intermediary. Relatively few respondents commented on the differences and similarities between these two definitions but among those who did, opinions varied widely. Consumer groups and enforcement agencies considered the terms were largely interchangeable in the UK and supported the option of extending the CCA definition of 'credit broker' to incorporate all activities falling within the Directive's definition of 'credit intermediary', as it would make enforcement easier. On the other hand, another respondent considered that there was a clear distinction that should be preserved – between credit brokers who advise the consumer on the most advantageous offers available and other small-scale or more amateur operators, like mail order agents.

219. Overall, on the issue of whether to use the Directive term 'credit intermediary' or extending the CCA definition of 'credit broker', the consultation produced little useful evidence. There were only a small number of comments on how far the two groups overlap and these were somewhat contradictory. There was no clear evidence that extending the CCA definition would bring numbers of additional businesses within the definition. Therefore, in the absence of any clear evidence as to the impact of extending the definition of credit broker to cover credit intermediaries, it has been decided to use the Directive's definition of 'credit intermediary' for the requirements under article 21.

Costs

220. The costs to individual businesses of the new requirements are likely to relate primarily to having to change advertising and documentation intended for consumers to include the new disclosures. Other costs are likely to be insignificant. The non-prescriptive approach to implementing these requirements will provide flexibility for lenders, which should help to minimise costs.

221. Estimates provided by industry indicate that costs associated with implementation vary from zero to £0.1m for a large lender. As the proposed definition does not appear to impose any significant additional requirements on business, it seems likely that the cost impact will be negligible.

Benefits

222. Customers may benefit from greater transparency in conducting transactions through credit intermediaries that may lead to them shopping around and exerting greater competitive pressure, leading to lower fees. However, it is difficult to quantify this impact.

Scope: It is intended to apply this article across all consumer credit related-agreements, with the exception of second-charge mortgages.[120] Regardless of which type of credit product consumers choose, there should not be any differences in the type of information they expect to receive regardless of how they wish to access that product (including through an intermediary). As before, second-charge mortgages are excluded due to the ongoing review of regulation in this area.

Admin burdens: There may be some additional burden for those credit intermediaries who fall under the definition set out in the Directive, if they do not already supply such information to consumers. As we do not know how many consumers might choose to access credit products via a credit intermediary, it is not possible to quantify this burden.

[120] This article is not relevant to pawnbroking

Summary: Analysis & Evidence

Policy Option:	Description:
Implementation of category 3	**Implementation of the Consumer Credit Directive – articles for which there are options in implementation (category 3)**

COSTS

ANNUAL COSTS	
One-off (Transition)	**Yrs**
£ 27.5m-111m	10
Average Annual Cost (excluding one-off)	
£ 128.1m-136.9m	

Description and scale of **key monetised costs** by 'main affected groups' System change costs (**£6m-34m one-off; £0.6m-3.4m per year**); increase in potential liability under linked credit agreements (**£25m per year**); loss of interest due to partial early repayment (**£45m per year**); extension to other forms of lending (**£21.5m-77m one-off; £57.5m-63.5m per year**)

Total Cost (PV) **£ 1,130m-1,290m**

Other **key non-monetised costs** by 'main affected groups'

Additional time/costs associated with assessment of creditworthiness (article 8) and adequate explanations (article 5.6); costs to consumers through potential reduction in availability of credit. Admin costs are scored separately here.

BENEFITS

ANNUAL BENEFITS	
One-off	**Yrs**
£ -	10
Average Annual Benefit (excluding one-off)	
£ 169.5m-175.5m	

Description and scale of **key monetised benefits** by 'main affected groups'

Benefits to lenders through reduction in unsecured debt write-offs (**£84m per year**); reduction in interest costs due to partial early repayment (**£45m per year**); extension to other forms of lending (**£40.5-46.5m per year**)

Total Benefit (PV) **£ 1,460m-1,510m**

Other **key non-monetised benefits** by 'main affected groups'

Extended protection to consumers for high-value purchases under linked credit agreements; reduction in number of copies of credit agreements.

Key Assumptions/Sensitivities/Risks Consumers need to switch (or at least threaten to switch) in order to realise many of the potential gains from increased competition; international suppliers must enter the UK market in order for consumers to be able to switch (or threaten to switch) to them; improved creditworthiness assessment leads to reductions in debt write-offs.

Price Base Year 2009	Time Period Years 10	**Net Benefit Range** (NPV) **£ 170m-380m**	**NET BENEFIT** (NPV Best estimate) **£ 275m**

What is the geographic coverage of the policy/option?			UK	
On what date will the policy be implemented?			June 2010	
Which organisation(s) will enforce the policy?			OFT	
What is the total annual cost of enforcement for these organisations?			£ -	
Does enforcement comply with Hampton principles?			Yes	
Will implementation go beyond minimum EU requirements?			Yes	
What is the value of the proposed offsetting measure per year?			£ N/A	
What is the value of changes in greenhouse gas emissions?			£ N/A	
Will the proposal have a significant impact on competition?			Yes	
Annual cost (£-£) per organisation (excluding one-off)	Micro **Unknown**	Small **Unknown**	Medium **Unknown**	Large **Unknown**
Are any of these organisations exempt?	No	No	No	No

Impact on Admin Burdens Baseline (2005 Prices)				(Increase - Decrease)
Increase of	£ 1.105m	Decrease of	£ -	**Net Impact** **£ 1.105m**

Key: **Annual costs and benefits:** **(Net) Present**

Category 3 – changes to existing regime; options available

Article 2 – Scope

223. The scope of the Directive does not match exactly the scope of existing UK consumer credit legislation. Certain consumer credit agreements fall outside the scope of the Directive, which also sets a threshold and ceiling, and the definition of "consumers" to which the provisions of the Directive apply is narrower than is the case in UK legislation. The list below sets out these in more detail those types of agreements that Member States have the opportunity to include on an article-by-article basis:

- Lending to small businesses
- Loans below €200
- Loans above €75,000
- Second-charge mortgages
- Hire purchase agreements
- Free credit
- Interest-free credit (repayable within 3 months with only insignificant charges)
- Modifying agreements which are the outcome of a court settlement or allow deferment of payment of an exiting debt free of charge
- Pawnbroking

224. In relation to these potential exclusions, three options were considered:

1. **Option 1**: Do not extend the scope of the Directive to include all other types of lending currently outside of scope (listed above) – i.e. maintain the same exclusions as above
2. **Option 2**: Extend the scope of the Directive to include all other types of lending currently outside of scope (listed above)
3. **Option 3**: Extend the scope of the Directive for certain types of lending and under certain circumstances where it is deemed appropriate

225. The costs and benefits of including these categories of lending are evaluated below:

Option 1 – maintain existing exclusions within Directive

226. By maintaining the existing exclusions above, there are neither additional costs nor benefits associated with this option. This means that there are no additional costs or benefits over and above those set out over the course of the three categories.

Option 2 – extend scope of Directive include all types of lending

227. It is difficult to estimate the costs entailed with extending the scope of the Directive to cover all types of lending that are covered by the Consumer Credit Act (including second-charge mortgages). However, as an indicative estimate here, it has been estimated that the overall implementation costs might double, along with the ongoing costs. If so, this would imply additional one-off costs of **£27.7m-£99.2m** and additional ongoing costs of **£74.4m-£82.2m per year**.

228. Similarly, it could lead to an increase in certain aspects of the benefits calculated for the sections above – additional benefits of **£52.4m-59.7m per year**.[121]

[121] A doubling of benefits associated with increase in cross-border purchases (£6.5m-12m), saved interest costs due to early withdrawal (£0.9m-2.7m) and reduction in interest costs due to partial early repayment (£45m).

Option 3 – extend Directive for certain types of lending, where it is deemed appropriate

229. Below is a summary of how we intend to treat the respective types of credit agreements falling outside the scope of the Directive:

230. **Small-business lending** (up to £25,000) is caught by UK consumer credit legislation and the amending provisions of the Directive will be applied to such business lending with the exception of:
- advertising requirements (not currently covered by UK legislation);
- mandatory use of the SECCI (although pre-contractual information would still have to be provided, either via the SECCI or the existing regime, set out in the Disclosure Regulations), and
- the requirement to provide amortisation tables on demand

231. Overall, it was felt that small business lenders are often akin to ordinary consumers and require similar protections. Therefore, lending to small business (up to £25,000) will continue to be regulated under the CCA, but provisions on adequate explanations and right of withdrawal will be applied to such loans.

232. Analysis from the Annual Small Business Survey (ASBS) shows that, of those SMEs seeking finance in the last 12 months (17% of all SMEs), 46% sought finance of less than £25,000.[122] It is estimated that there are just under 5 million SMEs in the UK, this would imply that up to roughly 400,000 SMEs could be covered by the Directive. However, not all of these SMEs will obtain finance (the ASBS suggests that 17% of those seeking finance fail to do so from the first source), so this might imply that the number of SMEs is likely to be around 325,000.

233. Given that previous estimates suggest that there are approximately 650,000 personal unsecured loans annually in the UK, this suggests that articles which have been extended to cover small-business lending up to £25,000[123] should be increased by around 50%.

234. **Loans below €200 (£160)** will be subject to the full requirements of the Directive. We would, however, retain the existing 'light-touch' treatment for loans below £50 allowed in UK law. Some lenders believed that this 'light-touch' regime should be extended to loans below £160. Evidence from a leading provider of low-value loans indicates that the number of loans below £160 is almost the same as the number of estimated in-scope unsecured loans (650,000). However, given their low value compared to the average value of an unsecured loan (£7,817 based on BBA data), it is likely that extending the Directive to cover these loans[124] will not result in a doubling of costs. As a conservative estimate, it has been assumed that costs (and potentially benefits) should be increased by a further 5% to incorporate those loans below £160.

235. **Loans above €75,000 (£60,260)** will be subject to the full requirements of the Directive, but the following provisions of the Directive will not be applied:
- mandatory use of the SECCI (although pre-contractual information would still have to be provided, either via the SECCI or the existing regime, set out in the Disclosure Regulations);
- the requirement to provide adequate explanations (because in the case of a loan of this size the borrower is likely to be relatively well-informed and very likely to be taking legal advice);
- the right of withdrawal;
- the requirement to provide amortisation tables on demand

[122] **http://www.bis.gov.uk/files/file50124.doc**
[123] i.e. all articles except for articles 4, 5 and 15
[124] For all articles, except 15

236. It has not been possible to estimate the number of unsecured loans with a value in excess of £60,260, either in absolute or relative terms. However, discussion with industry indicates that it is unlikely to be a large number. Therefore, no allowance has been made in terms of additional costs (and benefits) of extending relevant articles to incorporate these types of loans.[125]

237. **Modifying credit agreements** – we will not take advantage of the 'light-touch' provisions permitted in the Directive, as consumers who have already fallen into difficulties need full protection. Since this category of lending is a modified version of an in-scope agreement, this is unlikely to increase the costs (and potentially benefits) associated with implementation.

238. **Pawnbroking agreements** will be subject to the same consumer credit rules as other credit agreements, including the relevant amending requirements of the Directive (with the exception of article 8, for reasons set out below).[126] According to the National Pawnbrokers Association, there are an estimated 1,100 pawnbroking shops in the UK. In the context of the 650,000 in-scope unsecured loans per year, it is unlikely that extension of relevant part of the Directive to pawnbroking will result in a significant impact on costs or benefits. We are also not applying the requirement to check creditworthiness and the adequate explanations required in the case of pawnbroking are limited to the right of withdrawal and the consequences of default.

239. **Second-charge mortgages** will continue to be subject to existing CCA provisions because regulation in this sector is still under review[127] and it would not therefore makes sense to impose changes at this stage. However, it will be open to lenders to comply with the provisions in respect of pre-contractual information and contractual information, so that those lenders offering both secured and unsecured loans can rationalise their information systems if they wish, rather than providing information in two formats.

240. **Interest-free credit** – under certain conditions[128], the Directive will not apply to this form of credit. Latest figures available (from 2008) show that 'instalment credit' accounts for £2.4 billion in gross lending, compared to almost £40 billion for personal unsecured loans. This suggests that extending the relevant articles of the Directive to certain types of interest-free credit will increase potential costs (and benefits) by 6%. However, given that at least some proportion of interest-free credit agreements are likely to meet the exemption criteria, it could be assumed that costs (and potentially benefits) should be increased by 5% in order to account for this increase.

241. **Hire purchase agreements** – we believe that treating these agreements differently from other consumer credit products could lead to consumer detriment; in particular, confusion about which rights would apply relative to conditional sale agreements, which are very similar to hire purchase agreements. On this basis we propose to apply the relevant aspects of the Directive to such agreements.[129] Data from the FLA indicates that gross lending for hire purchase was just over £7 billion in 2008; compared to the £40 billion for personal unsecured loans, this implies an increase in costs (and potential benefits) of 17.5%.

Table: Summary of where scope of Directive is being extended (option 3)

[125] Articles 4, 8, 9, 10, 11, 13, 16, 17, 19 and 21
[126] Articles 9, 13, 15 and 21 are not relevant to pawnbroking
[127] **www.hm-treasury.gov.uk/consult_mortgage_regulation.htm**
[128] Where the total number of payments does not exceed four, where those payments are made within 12 months or credit is provided without interest/any other charges. Charge cards potentially fall into this category of 'interest-free credit', though the extent to which they meet the exemption criteria, but for which we do not have the more detailed data necessary to make an assessment.
[129] Articles 11, 113 and 15 are not relevant to hire purchase

Agreements outside scope of Directive	Articles applied													
	4	5/6	5.6	8	9	10	11/ 12	13	14	15	16	17	19	**21**
Small-business lending (up to £25,000)			✓	✓	✓	✓*	✓	✓	✓		✓	✓	✓	✓
Loans below €200	✓	✓	✓	✓	✓	✓	✓	✓	✓**		✓	✓	✓	✓
Loans above €75,000	✓			✓	✓	✓*	✓	✓			✓	✓	✓	✓
Second-charge mortgages														
Overdrafts (light-touch approach)	✓	✓		✓	✓	✓	✓					✓	✓	✓
Hire purchase	✓	✓	✓	✓	✓	✓			✓		✓	✓	✓	✓
Interest-free credit[1]	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Agreements from court settlement[2]	✓	✓	✓	✓		✓	✓	✓	✓	✓	✓	✓	✓	✓
Pawnbroking	✓	✓***	✓****			✓	✓		✓		✓	✓	✓	

[1] – except where already exempt from CCA
[2] – where these constitute new agreements

* – except requirement for amortisation tables on demand
** – applies to loans above £50
*** – only applies to new customers, those who have not used the pawn broker within previous 3 years, or customers who request a copy of pre-contractual information
**** - limited requirements apply to this type of agreement

242. Overall, this means that extending the Directive in the ways that we propose above across the different types of lending leads to an increase in costs (and potentially benefits) of around 77.5%. This implies additional one-off costs of **£21.5m-£77m** and additional ongoing costs of **£57.5m-£63.5m per year**. This action also implies additional benefits of **£40.5m-£46.5m per year**.

Article 5.6 – Adequate explanations

243. Under this article, Member States have to include a requirement to provide 'adequate explanations' regarding the terms and conditions of credit products, in order to enable them to assess whether proposed credit agreements are suited to their needs and financial situation. However, the extent of such explanations (including the extent to which such explanations are 'adequate') and the circumstances under which they must be given is subject to the decisions of individual Member States.

244. There are no specific requirements in UK legislation for creditors to give adequate explanations about the credit on offer, although some lenders will provide something akin to this depending on the exact circumstances. Despite the existence of pre-contractual and contractual information, evidence suggests that some consumers may not read the information they are given and some consumers may not understand the significance of key aspects of agreements they are entering into.

245. Against this background, implementation of article 5.6 provides an opportunity to enhance understanding in a way which could reduce the incidence of consumers entering into unsuitable agreements or taking on unsustainable levels of debt. In this sense the requirement to provide adequate explanations complements the requirement in article 8

(creditworthiness) – adequate explanations will ensure that consumers can better determine whether or not a loan is affordable, while the requirement to check creditworthiness will ensure that lenders reach their own view on whether or not a consumer is creditworthy.

246. The proposed approach in the consultation document identified different categories of consumer credit and set out precise explanation requirements that would apply, depending on the category and size of a loan. This could take the form of minimum standards (information requirements) with which lenders would have to comply, including a combination of explanation and examples covering features common to all credit products, as well as features specific to the credit products proposed.

247. The information falls into four categories:

- *Basic generic information,*
- *Additional generic information,*
- *Basic product-related information,* and
- *Additional product-specific information*.

248. The first two categories (*generic information*) would be standard for all products and would cover default, the right of withdrawal, basic information on the meaning of the APR, how interest works and how interest and charges can increase the cost of borrowing over time. The third category (*basic product-related information*) would explain the component costs of the specific product(s) offered and, where appropriate, how interest rates might change and the effect this could have.

249. The information in the fourth category (*additional product-specific information*) would vary according to the kind of product and would take account of consumer risk and known information imperfections. For example, in the case of credit cards, the additional product-specific information would cover the dangers of making only minimum monthly repayments, how 0% balance transfers work, the order in which repayments are allocated and, if appropriate, terms and conditions for credit card cheques.

250. Not all categories of information would be required in all cases; it would depend upon the type and size of the credit offered (summarised in the table below).

Types of credit	Types of information			
	Basic generic information♣	Additional generic information	Basic product-related information♣	Additional product-specific information
Prime fixed sum loans	✓	Loans >£500	✓	
Sub-prime fixed sum loans*	✓	Total amount owed >£100	✓	
Consolidation loans*	✓	✓		
Credit cards	✓	✓	✓	e.g. how 0% balance transfers work; dangers of making only minimum repayments; order of repayments
Store cards	✓	✓	✓	e.g. (where interest rate exceeds a given level) that this is an expensive form of credit and signpost to comparison website (if appropriate)
Home credit*	✓	Total amount owed >£100	✓	e.g. (where interest rate exceeds a given level) that this is an expensive form of credit and signpost to comparison website (if appropriate)
Payday loans and cheque-cashing*	✓	Total amount owed >£100	✓	e.g. (where interest rate exceeds a given level) that this is an expensive form of credit and signpost to comparison website (if appropriate); the dangers of rolling-over loans
Bills of sale* (where this applies to credit products)	✓	✓	✓	e.g. the danger of losing the vehicle on which the loan is secured, how it would be possessed and the loss this could entail.
Linked credit (hire purchase and conditional sale)	✓	Loans >£100	✓	Only for loans >£100: e.g. Goods could be repossessed in case of default;
Pawnbroking			✓	e.g. pledge would be sold if not redeemed and how much the consumer would get back in this case.

Analysis

251. The majority of industry respondents considered that the information provided should be simple and kept to a minimum, possibly conforming to the suggested basic-generic information above. Several respondents felt that lenders should be given flexibility to tailor the level of information provided, appropriate to the borrower, product and circumstance. Consumer groups and enforcement bodies were more supportive of the proposed approach, with one respondent considering that it did not go far enough.

♣ This information must be given orally if F2F or telephone interaction

* Types of loans commonly accessed by more vulnerable consumers

* Types of loans commonly accessed by more vulnerable consumers

252. Some industry respondents felt that the provisions would only increase costs, without necessarily providing an additional consumer benefit. Others considered that the information already required to be provided by UK lenders meant that the UK was not obliged to make any changes at all to its domestic law in this regard. Concern was also expressed that the cost of complying with the provision would cause credit to contract, potentially leading to an increase in illegal lending.

253. Several respondents expressed concern about how provisions would be enforced, with many wanting details of how evidence of compliance should be recorded. This view was echoed by others seeking to minimise the possibility of vexatious claims claiming that agreements had not been executed properly and were therefore unenforceable.

254. Most consumer groups and enforcement bodies considered that consumers should not be able to decline explanations from the lender, as it risked opening the provision to avoidance by lenders. On the other hand, most industry respondents considered that consumers should be able to decline explanations. Some considered that customers already received too much information and would not want to receive more, while others considered it would be condescending to force explanations on customers.

255. Most industry respondents opposed being required to test consumers' level of understanding, which was seen as expensive and onerous for the lender. Other noted that consumers might be likely to feel "patronised or insulted" if tested, and that testing would be "humiliating and invidious for customers who failed". In addition, others considered that testing would be impractical for certain environments, such as call centres or busy department stores.

256. No evidence was provided through the consultation regarding the potential costs and benefits of these proposals, such as the increased time taken to process applications, or potential reduction in irresponsible lending (and borrowing) as a result of improved consumer understanding.

257. In their assessment for BIS, Copenhagen Economics concluded that a 'light-touch' approach to implementation would be unlikely to imply either significant one-off or ongoing costs, as it would likely mean relatively small changes compared to the current situation.[130] However, 'heavy-touch' implementation may lead to lenders incurring significant ongoing costs. As such ongoing costs generally have a direct market impact reflected in higher prices, 'heavy-touch' implementation may reduced both demand and supply of consumer credit, potentially pushing some high-risk consumers toward more expensive (or illegal) loans. 'Heavy-touch' implementation could also mean that the costs of providing these types of lending products increase to a level not supported by the level of demand.

258. Whilst it is difficult to quantify some of the costs associated with over-borrowing, such as financial distress and consequent impacts on ill health or relationship breakdown, a recent study by LSRC[131] estimated costs associated with debt problems to be in excess of £1,000 per individual. On the basis of recent report analysing levels of over-indebtedness in Britain indicates that between 10% and 15% of households could be considered to be 'over-indebted'.[132] If this number could be reduced by only 1% as a result of implementing this Directive, there could be potential one-off benefits to the economy of £25m-£37.5m.[133] However, this has already been accounted for in discussion under article 5.

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[130] 'Study of the effects on the UK economy of the revised Consumer Credit Directive', Copenhagen Economics (2009)

[131] **http://www.lsrc.org.uk/publications/Impact.pdf**

[132] 'Over-indebtedness in Britain: Second follow-up report', BIS (2010)

[133] Based on evidence that there are 25 million households in the UK (Source: ONS Social Trends 39)

Outcome

259. The approach to implementing article 5.6 has been revised to reflect the above, by introducing less complex requirements for explanations about a manageable number of key features of products (now seven).[134] Broadly speaking, the same approach is to be applied to all credit products, although the detail of the explanations to be given will vary, depending on the product type. It is believed that this approach represents the right balance between a principles-based but potentially wide-ranging requirement imposed on lenders (on the one hand) and the risk of unnecessary over-prescription and information overload for consumers (on the other).

260. The objective of this article is "to place the debtor in a position enabling him to assess whether the agreement is adapted to his needs and his financial situation". It is for the lender to judge the amount of detail needed to meet this objective, and OFT guidance will provide necessary detail on where such explanations are applicable. It is required that certain aspects are to be explained orally in face-to-face and telephone situations.[135] Finally, it has not been provided for consumers to waive their right to explanations.

Scope: In relation to applying adequate explanations to small-business lending, responses were divided. On the one hand, the majority of lenders though that it was not necessary to apply these provisions, or they should be done on an optional basis; in support of this, it was argued that such customers were more sophisticated and such transactions often involved more detailed discussions about the agreement anyway. The counter-argument advanced by consumer bodies and enforcement agencies was that not all such customers will be sophisticated in credit matters – for example, some could be self-employed, with a close inter-connection between business and personal credit use.

With regard to agreements above £60,260, a clear majority of respondents felt that the provision on adequate explanations should not apply, on the basis that such consumers (often high net-worth individuals) were usually well-informed. On the other hand, some respondents felt that, as with small-business loans, concerns regarding the potential vulnerability of consumers also applied here.

It has been decided that the requirement to provide adequate explanations would not be applied to large loans (over £60,260), as borrowers at this end of the market will generally have access to expert advice. Some industry respondents requested that adequate explanations should not be applied to business lending. However, this requirement will be applied to lending to micro-businesses up to £25,000, as business lending of this sort is often mixed with consumer lending and business borrowers are often no better informed than other consumers.

Admin burdens: This article places a new requirement on lenders to explain certain aspects to consumers, which will generate an admin burden. For loans concluded face-to-face (accounting for almost 60% of unsecured loans, according to the BBA), this explanation should be given orally. This will entail potentially significant time and resource costs for lenders – if it is assumed that such an explanation would take an additional 5 minutes for every customer, this implies an additional total cost across all lenders of £325,000 per year.[136] For those loans concluded at a distance, this would entail the sending of additional information. If it is assumed

[134] These seven features are: the uses for which credit to be provided under an agreement is not suitable; the cost of the credit; features of an agreement which might operate in a way which could significantly affect the consumers adversely and which might not be obvious to him/her; consequences of default; advisability of the consumer reading pre-contractual information; existence and nature of any right of withdrawal, and how to obtain further explanation from the creditor

[135] Namely: features of an agreement which might operate in a way which could significantly affect the consumers adversely and which might not be obvious to him/her; consequences of default, and advisability of the consumer reading pre-contractual information

[136] 60% of 650,000 loans = 390,000 loans per year; assumed wage rate of £10 per hour

that this would cost up to £2 per notification[137], this would imply an additional total cost across all lenders of £520,000 per year. In all, this would mean an additional admin burden of **£845,000 per year** due to adequate explanations.

Article 8 – Creditworthiness

261. This article mandates the introduction of a new requirement to ensure that creditors assess consumers' 'creditworthiness' before granting or significantly increasing the amount of credit. Where appropriate, lenders should proactively seek information from consumers and, where necessary, consult relevant databases. However, there is no definition of 'creditworthiness' in the Directive and there are a number of different methods of doing so – for example, based on affordability, or likelihood of repaying.

262. There is no specific requirement in UK law to check consumers' creditworthiness. However, the OFT can consider whether or not a lender has lent irresponsibly in its consideration of fitness to hold a consumer credit licence and, clearly, checking creditworthiness adequately is an aspect of responsible lending. Many lenders do check consumers' creditworthiness, but they will generally do this in order to assess the risk of default rather than the wider question of the affordability of a loan and the impact it could have on a consumer's financial well-being. There is therefore a question as to whether, particularly in the light of the outcome of borrowing patterns over recent years, lenders should be given greater responsibility for gauging whether a loan is affordable before granting credit.

263. Consumer over-indebtedness is a serious problem and implementation of article 8 provides an opportunity to strengthen existing provisions on responsible lending in order to reduce the incidence of consumers taking on unsustainable levels of debt. As indicated above, the requirement for lenders to check consumers' creditworthiness complements the requirement in the Directive for lenders to provide adequate explanations (article 5.6). Among other things, article 5.6 will enable consumers to understand better whether or not they can afford a loan and to borrow responsibly; the requirement to check creditworthiness will help ensure that the lender lends responsibility.

264. As set out in the consultation document, there could be a range of different approaches to implementing this article, putting a greater or lesser degree of responsibility on the lender to ascertain the impact that credit would have on the borrower. This could be broadly equated to a 'light-touch' approach[138] (i.e. low burden on business, but lower levels of consumer protection) and 'heavy-touch' approach[139] (i.e. high burden on business, but high levels of consumer protection).

265. In terms of specific actions that lenders might be required to take, this could include:

- Checking a consumer's credit status with a credit reference agency;[140]
- Seeking specific information from the consumer about earnings, outgoings and disposable income (and verifying through appropriate documentation), or

[137] For the Consumer Credit Act 2006, it was estimated that the material costs of sending a paper statement to customers was around 30p (**http://www.berr.gov.uk/files/file38292.pdf**); this has been increased to reflect an element of the time associated with production of the notification

[138] For example, requiring the lender to assess the likelihood of the consumer repaying credit at all or within a reasonable timescale, without having to consider the wider impact of a loan on the consumer's overall financial well-being

[139] For example, requiring the lender to examine present and future affordability in order to avoid causing or contributing to a consumer's over-indebtedness, through proactively seeking information about the consumer's wider economic circumstances

[140] It is recognised that many lenders already do this and may not always be appropriate in every case

- Modelling repayment according to standard, prescribed repayment periods in order to avoid unrealistic assumptions.[141]

266. Similarly to consideration of article 5.6 (adequate explanation), there should be a general duty for lenders (and, where appropriate, intermediaries) to base their lending decisions on a reasonable assessment of consumers' creditworthiness. There would then be additional minimum standards with which lenders would have to comply, according to the type and amount of credit offered. The approach set out in the consultation document proposed three levels of creditworthiness-checking, according to a combination of the size of the loan and the kind of credit offered (summarised in the table below):

- *Level 1* – Lenders would either have to check a consumer's credit status by obtaining relevant data from a credit reference agency or take a reasonable view of the consumer's creditworthiness on the basis of information provided by the consumer concerning existing income and credit commitments;
- *Level 2* – In addition to Level 1, lenders would be required proactively to seek evidence from consumers (except where information had already been obtained from a credit reference agency or other data source) sufficient to enable the lender to estimate the consumer's disposable income on the basis of total income and financial commitments. In the case of running account credit agreements, the lender would be required to base his assessment of affordability on a maximum repayment period of three years and lenders would be prohibited from relying on the possibility of extending the original term of the loan. The lender would also be required to make reasonable assumptions about future economic or other changes, particularly bearing in mind the possibility of interest rate increases
- *Level 3* – In addition to Levels 1 and 2, lenders would be required to take appropriate steps to verify information provided by the consumer, taking a reasonable degree of responsibility for ensuring its accuracy. The lender would also take steps to be certain whether the consumer's financial or other relevant circumstances might change and to take account of relevant personal commitments. Finally, the lender would be required to ask the consumer to reveal any other information which might be relevant to a decision to lend.

Types of credit	Levels of checks			
	Base level	Level 1	Level 2	Level 3
Prime fixed-sum loans	✓	✓	Loans >£500	Loans >£1000
Sub-prime fixed-sum loans*	✓	✓	✓	
Consolidation loans*	✓	✓	✓	Agreed ceiling >£300
Credit cards	✓	✓	✓	Agreed ceiling >£500
Store cards	✓	✓	✓	Agreed ceiling >£500
Home credit*	✓	✓	✓	Agreed ceiling >£300
Payday loans and cheque-cashing*	✓	✓	✓	Loans >£300
Bills of sale*	✓	✓	✓	Loans >£300
Linked credit (hire purchase and conditional sale)	✓	✓	Loans >£500	Loans >£1000
Pawnbroking	Customer liability = pledged item	Customer liability = pledged item	Customer liability = pledged item	Customer liability = pledged item

[141] For example, the term of a loan for linked credit should not exceed the assumed life of the asset financed, or prescribing maximum periods over which loans must be assumed to be repaid

Analysis

267. The majority of industry respondents disagreed with this proposed approach, with many considering it over-prescriptive, inflexible or unnecessarily complex. One enforcement agency also did not agree with the degree of prescription, considering that it did not allow sufficient flexibility for the creditor to make an appropriate assessment in individual cases. Some industry respondents agreed with the proposal for Level 1 checking, but disagreed with the proposed Level 3 checking – considering it to be an "intolerable burden on lenders" and one that consumers would regard as an unnecessary invasion of their personal commitments and circumstances.

268. Most consumer groups and enforcement agencies were supportive of the proposed approach, although some expressed concern about compliance demonstrating that proper creditworthiness assessments had been undertaken. Many industry respondents felt that an inability to repay a loan usually arose from a change in borrowers' circumstances and was rarely caused by a lender failing to assess the borrower's ability to pay at the outset. It was also contended that disposable income was not predictive of a borrower's ability to pay, with past repayment performance as more predictive. Other respondents noted that access to a reliable electronic source of income data (as well as water, electricity and gas suppliers) was required to enable more effective affordability calculations.

269. Many industry respondents warned that the proposed approach would result in a reduction in access to credit, an increase in costs (which would be likely passed on to consumers) and a reduction in competition through lenders exiting the market. The reduction in access to credit may therefore result in some consumers being pushed towards illegal lending. Some considered it would also lead to an increase in unenforceable contract claims against lenders. It was not felt that there would be potential benefits through enhanced creditworthiness checking – i.e. improved consumer understanding and possible reduction in irresponsible lending (and borrowing). No information on the potential quantification of any of these impacts was received through the consultation.

270. As for their assessment in relation to adequate explanations, Copenhagen Economics concluded that a 'light-touch' approach to implementation would be unlikely to imply either significant one-off or ongoing costs, as it would likely mean relatively small changes compared to the current situation.[142] However, 'heavy-touch' implementation may lead to lenders incurring significant ongoing costs. As such ongoing costs generally have a direct market impact reflected in higher prices, 'heavy-touch' implementation may reduced both demand and supply of consumer credit, potentially pushing some high-risk consumers toward more expensive (or illegal) loans. 'Heavy-touch' implementation could also mean that the costs of providing these types of lending products increase to a level not supported by the level of demand.

271. In addition, there may be benefits to firms through ensuring that credit is affordable to the consumer. This could lead to a reduction in bad debts to lenders, which currently represent a significant cost to the economy – latest figures suggest write-offs related to unsecured debt of £8.4 billion in 2009.[143] If this figure could be reduced by even 1% through the implementation of the Directive, this would lead to benefits of **£84m per year**.

272. Several respondents contended that a combination of the Lending Code, Consumer Credit Act and impending OFT guidance on irresponsible lending would be sufficient to meet the requirements of article 8. Many recommended a principles-based approach, with policing via the OFT's licensing regime.

[142] 'Study of the effects on the UK economy of the revised Consumer Credit Directive', Copenhagen Economics (2009)
[143] Source: Bank of England

273. It is acknowledged that responsible lending and affordability are complex concepts that cannot be adequately dealt with without lengthy and detailed explanation. Legislation is an inferior tool for this purpose, as it is inflexible and not easily amended or updated. However, guidance can be kept up to date in light of developing practice and can more readily take account of ongoing representations of stakeholders in the light of practical experience.

Outcome

274. Therefore, it has been decided to limit implementation of this aspect of the Directive to what is strictly necessary – i.e. a legal provision require lender to assess creditworthiness. The more complex issues of irresponsible lending and affordability will be dealt with through OFT guidance. The draft legislation will not attempt to describe in detail how creditworthiness is to be assessed or even to define creditworthiness, nor will it limit the OFT's room for manoeuvre in producing guidance on affordability in accordance with the requirement of the CCA.

Scope: Several industry respondents considered that business lending should be excluded from the requirement to assess creditworthiness or be subject to a lower-level of checking. One considered that applying such checking to business lending only increase 'red tape; and did not address the problem of over-indebtedness. Nevertheless, it has been decided that the requirement to check creditworthiness should be applied to all consumer credit agreements currently covered by the CCA, with the exception of second-charge mortgages and pawnbroking.

Admin burdens: The admin burdens associated with this article are unlikely to be significant, given the light-touch approach to implementation that has been followed. As set out above, many lenders already undertake some form of 'creditworthiness' assessment and, as such an assessment is not set out prescriptively in legislation, this may not entail any additional burden for some lenders.

Article 10 – Credit agreement information

275. Article 10 specifies the information that much be provided to the consumer at the contractual stage. The information listed in article 10 is very similar to that listed in article 5 (pre-contractual information).

276. In terms of contractual information that has to be provided with a credit agreement, it is likely that – as a result of implementing article 10 – the amount of discretion that lenders have in determining its presentation will increase. This is because article 10 is far less prescriptive on the form and ordering of information, compared to the requirements in the relevant 1983 regulations.[144]

277. In addition to setting out requirements on information to be included in a credit agreement, article 10.1 provides that all consumers should receive a copy of the agreement. As discussed in the chapter on article 10 in the consultation document, we have been considering various options as to how the existing Consumer Credit Act provisions (ss62-63) should be tailored to meet this requirement. These options are repeated below:

Option 1

278. Amend section 63 (duty to supply copy of executed agreement) so that consumer gets (a) notification of the date on which the agreement was executed and (b) confirmation that

[144] Consumer Credit (Agreements) Regulations

the agreement has not been changed rather than a copy of the executed agreement itself where they already have a copy of unexecuted agreement by virtue of section 62.

Option 2

279. Amend section 62 (duty to supply copy of unexecuted agreement) so that the consumer does not get a copy of the unexecuted agreement after signing the original and sending/handing it back. This would mean that in some cases after signing, the consumer may not have all the necessary information as to the agreement they have signed up to in the period leading up to the beginning of the 14 day right of withdrawal period.

Option 3

280. Repeal 62 and replace section 63(1) with obligation to provide a copy of the executed agreement except where the creditor has already provided before the agreement has been made a copy of the agreement or a draft agreement to comply with a request made under Article 5.1r). In that case, the creditor should be permitted to treat that copy (provided it remains unchanged from the executed agreement) as the copy of the executed agreement, by giving the borrower written notice that the agreement is made and that the lender is treating the copy already supplied as the copy of the executed agreement. Additionally the provision should require written notice to inform the borrower that during the cooling off period, the borrower has the right to be supplied on request and free of charge with a further copy of the executed agreement.

281. The majority of responses to consultation supported the choice of option 3. Therefore, under the new regulations the debtor must always be provided with a copy of the executed agreement unless the debtor already has been provided with a copy of the unexecuted agreement, which contains the same terms and conditions as the executed one, and the debtor has been notified in writing of this fact. This is intended to preserve the existing safeguards in the Consumer Credit Act that ensure the consumer has access to a copy of their agreement, while at the same time helping to ensure that consumers are not sent superfluous copies of the agreement.

Costs

282. According to industry estimates, the cost for implementing article 10 varies between £0.3m and £2.3m for a large lender. This would imply an industry-wide implementation cost of **£3m-£24m**. It has been suggested by industry stakeholders that ongoing costs represent around 10% of these one-off costs, which would imply industry-wide ongoing costs of **£0.3m-£2.4m per year**.

283. None of the above options would seem to impose an additional cost on lenders as compared with the current situation, given that in many cases the draft agreement can be expected to remain unchanged – therefore, no further copies of documents would be required under option 1 and 3. The same is so under option 2, although it is possible that in some situations the consumer would be left without a copy of the agreement for their retention in the period leading up the agreement becoming executed. This can be an important safeguard to deter dishonest practice, such as where an unscrupulous lender increases the APR in the hope that the consumer does not notice.

Benefits

284. The principle benefit involved with all three options is a reduction in the need to provide additional copies of credit agreements. The options set out above are designed to minimise this possibility, to avoid unnecessary bureaucracy and information overload, while at the same time ensuring consumers have the necessary information at their disposal in order to decide whether to exercise their right to withdraw from the credit agreement.

Scope: The new regulations will apply in respect of most regulated consumer credit agreements. However, the existing Consumer Credit (Agreements) Regulations will continue to apply for second-charge mortgages, agreements over €75,000 (£60,260) and agreements entered into wholly or predominantly for the purposes of business below £25,000. For these categories of out-of-scope agreements, creditors will be free to provide contractual information either by complying with the new regulations or by continuing to comply with the requirements of the existing regulations. It was felt that information received by consumers through either format would be sufficient for them to make an informed decision about the product.

Admin burden: In relation to this article, there is likely to be a reduction in a burden under the Consumer Credit Act 1974, which is being altered.[145] However, without more detailed information it is difficult to quantify the extent of this reduction.

Article 15 – Linked credit agreements

285. Under section 75 of the Consumer Credit Act 1974, the UK already has amongst the highest levels of consumer protection in Europe, in terms of the joint and several liability of both supplier and creditor. This means that consumers can raise any problems with either the supplier (of the goods/service bought through the credit agreement) or the creditor (the party with whom the customer has signed the credit agreement). In addition, customers can refuse further payment once goods have been delivered or service rendered and can also claim return of payments made, as well as damages if goods are not complete or not in conformity with the contract.

286. Article 15.1 provides that – where the consumer has exercised a right of withdrawal from a contract for the supply of goods and services, and that right is based on EU law – she is no longer bound by a linked credit agreement. It is considered that the UK is already in compliance with article 15.1 and hence no action is required to implement it.

287. Article 15.2 contains protections for consumers where a transaction to purchase goods or services is financed by a linked credit agreement, as long as the amount of the credit agreement is not less than €200 (£160) and not more than €75,000 (£60,260). If there is a problem with the transaction, the consumer must first try to rectify this with the supplier; if she is unable to do so, she can pursue the creditor. Article 15.3 allows Member States to retain national rules covering joint and several liability, where these provide equivalent or higher levels of protection than article 15.2 – this means that the existing regime under section 75 can be maintained.

288. However, in some respects section 75 offers greater consumer protection than article 15.2, but in other respects it offers less. For example, section 75 currently covers purchases (rather than credit agreements) of between £100 and £30,000. Therefore, it applies even if the consumer has paid most of the price in cash, as long as at least £101 has been paid by credit. Section 75 does fall short of the protection offered by article 15.2, in that it does not cover situations where the cash price of the item is more than £30,000 and the amount of the credit agreement is not more than €75,000. It is therefore intended to maintain section 75, but changes will be necessary to cover the shortfall in protection in order to comply with implementation of the Directive.

289. There are 2 options for covering this shortfall in protection:

- **Option 1**: Raise the ceiling in section 75 so that it applies where the cash price of the item purchased is not more than €75,000 (£60,260).

[145] ID 11368, with a value of £21,000

- This would offer additional consumer protection, although the number of agreements covered is likely to be relatively small. This option is potentially costly for creditors, since the consumer does not have to pursue the supplier first in the event of a problem. Several respondents to the consultation felt that this was the best approach; however, we do not believe that raising the ceiling alone would guarantee coverage of credit agreements up to €75,000 and ensure we fully implement article 15.2.

- **Option 2**: Keep section 75 unchanged and apply the protections in article 15.2 to the shortfall (i.e. purchases where the cash price of the item is more than £30,000 and the amount of the credit agreement is not more than €75,000 [£60,260]).

  - This would ensure that we fully implement article 15.2 while minimising the costs on business, hence it is our preferred option.

Costs

290. In relation to article 15.1, there will be no impact on costs for businesses, as no action is required to implement it.

291. In relation to articles 15.2 and 15.3, there are potential costs for creditors in terms of the extent to which the consumer must pursue the supplier first. This will vary according to the options above.

292. As a representative example, assume a consumer buys a car costing £50,000, paying a deposit of £5,000 on a credit card and £45,000 in cash. Subsequently, she crashes the car.

- Under option 1, if the consumer is unable or unwilling to pursue the manufacturer for the cost of the car, the creditor is liable for the whole £50,000.
- Under option 2, the consumer would have to pursue the supplier first and the creditor is only liable for £50,000, in the event the consumer did not receive satisfaction from the supplier.

293. Costs will be incurred only when there is a problem and the consumer pursues the creditor to resolve this. In addition, the provisions will only apply to a limited category of agreements where the creditor used the supplier to make the credit agreement or the goods are explicitly specified in the agreement. According to one industry estimate, around 5 claims per month are made for purchases in excess of the current ceiling of £30,000; it is estimated that significantly more would be made if the law covered purchases over £30,000. If those claims were all successful, assuming an average amount of £40,000, this would result in an increased potential annual liability of around £2.4m for a large lender. Across the whole industry, this could amount to around **£25m per year**.

294. In terms of implementation costs, industry estimates suggest that these would be negligible, ranging from zero to £0.1m for a large lender. It is more likely that the potential liability identified above is the more appropriate cost to consider.

Benefits

295. For article 15.1, there will be no additional benefit for consumers, as the UK has already fulfilled implementation requirements under article 15.1.

296. For articles 15.2 and 15.3, both options will provide some additional benefit for consumers, as protection would be extended to higher-value purchases than is the case now. However, the overall benefit for consumers may be small, as the additional number of agreements covered is likely to be small (as set out above).

Scope: Respondents were generally in agreement with the proposal to keep section 75 of the CCA unchanged and apply the protection in article 15.2 to those agreements not covered by section 75, but covered by the Directive (i.e. purchases where the cash price of the item is more than £30,000 and the amount of the credit agreement is not less than £160 or not more than £60,260). However several respondents felt that it would be better to extend section 75 to credit agreements up to £60,260.

It has therefore been decided to keep section 75 unchanged and add a new section 75A applying to agreements outside the scope of the current section 75, but within the scope of the Directive, to implement article 15.2. Although this goes beyond minimum EU requirements, it is felt necessary in order to preserve the high value that consumers place on section 75[146], while keeping within the requirements of implementing the Directive.

Admin burdens: Implementation of this article is unlikely to entail any additional admin burdens.

Article 16 – Early repayment

297. Article 16 gives consumers the right to discharge her obligations under a credit agreement (fully or partially) at any time, and the right to a reduction in the total cost of credit corresponding to the interest and costs applicable to the remaining duration of the contract. It also gives lenders the right to compensation for the cost of early repayment provided that the early repayment falls within a period for which the borrowing rate is fixed, within certain limits.

298. The UK already has an early repayment regime, with the Early Settlement Regulations 2004 covering a wide range of situations in which agreements are terminated early (including cases of default), which is beyond those only where early settlement is requested by the consumer (as proposed under the Directive). However, there are two substantive differences:

- The current UK regime does not provide for partial early repayment, and
- The current UK regime does not make a distinction between variable and fixed-rate loans.

299. In relation to **full** early repayment arrangements, we are proposing to retain current UK regulations almost unchanged (including the option for creditors to recoup set-up costs and the administrative cost of early repayment). Therefore, the cost for creditors relating to this should be minimal and there is no additional benefit for consumers.

300. However, the UK does not already have provisions to cover **partial** early repayment, so we are also proposing to extend this regime to cover partial early repayment.

301. The article also provides a right for creditors to compensation for costs directly linked to early repayment, where it is made during a period for which the borrowing rate is fixed and they have incurred costs as a result (article 16.2). There are two options for Member States relating to this compensation:

- **Option 1**: Allow compensation only where total annual early repayments exceed €10,000 (£8,000), or
- **Option 2**: Allow higher compensation in 'exceptional circumstances', which are as yet undefined under the Directive

[146] In a survey of credit card holders, protection against fraud/goods not arriving was the most popular feature of credit cards, selected by 34% of respondents (source: 'Credit and store card research', TNS-BMRB (2010))

302. Such compensation is not currently a feature of the UK early settlement regime (introduced in 2004/5), which was considered to provide an appropriate and fair balance between consumers and creditors. We have no evidence that this is no longer the case and therefore wish to maintain the balance of the system as far as possible.

303. We are therefore retaining our current full early repayment regime. We have to allow for some additional compensation to creditors under article 16.2, but we do not consider that there is a good argument for disturbing the balance by allowing more than the minimum. The majority of respondents to consultation agreed with this proposed approach and the implementing regulations will allow for this compensation, but not stipulate how such compensation should be calculated or what factors should be taken into consideration. However, they will make clear that compensation is claimable only if certain conditions are met, including that compensation is fair and objectively justified; this will put the onus on lenders to justify their claim. In addition, compensation will also be capped at a maximum of either 0.5% or 1% of the amount repaid early (depending on the remaining term of the loan).

304. In relation to the potential options above, most of the industry responses to the consultation considered that a threshold for credit compensation claims should not be imposed and it should be possible to claim higher compensation where costs exceeded the amount allowed under the Directive. By contrast, enforcement agencies and consumer groups supported the proposal to impose a threshold and not allow higher compensation. Overall, option 1 remains the preferred option for implementation.

Costs

305. The regime that covers full early repayment was introduced under the Early Settlement Regulations in 2004. It may be likely that the costs incurred by industry in extending these provisions to also cover partial early repayment may be of a similar order of magnitude.[147]

306. However, cost estimates provided by industry for implementing article 16 are significantly less than this – implementation costs of between £0.3m-£1m for a large lender, which implies industry-wide costs of **£3m-£10m**. On the basis that ongoing costs represent around 10% of these one-off costs (as suggested by industry stakeholders) this would imply industry-wide ongoing costs of **£0.3m-£1m per year**.

307. In this context, the ongoing cost would likely take the form of interest income lost by lenders (and hence transferred to consumers in the form of lower overall interest payments). Industry responses to consultation indicate that around one-fifth of all loans are repaid in full before the end of their term. However, it cannot necessarily be assumed that these same consumers would necessarily be interested in making partial early repayments, which would suggest that 21% could be an over-estimate. On the other hand, consumers who previously might not have been able to make full early repayment (hence not part of the existing 21%) may be interested and able to make partial early repayment, which would suggest that 21% could be an under-estimate.

308. Industry intelligence suggests that consumers would be more likely to make a larger one-off 'overpayment', rather than smaller regular 'overpayments'. Although we do not have precise data on the aggregate impact, we can estimate the impact of this 'overpayment' for a representative consumer. A loan of average value (£7,817), average length (5 years[148]) and average cost (12.69%[149]) implies monthly repayments of around £175.[150] If it is assumed that a consumer would like to make an additional repayment of £1,000 at the mid-point of

[147] One-off costs of £160m-£180m; ongoing costs of £2m per annum
[148] Both based on BBA data
[149] Based on Bank of England data for advertised interest rates on a representative personal loan of £5,000 (series: IUMBX67, average for 2009)
[150] **http://www.moneymadeclear.fsa.gov.uk/tools.aspx?Tool=loan_calculator**

the loan (i.e. after 2.5 years, or 30 months), then this would reduce the overall interest payable over the life of the loan from £2,800 to £2,450 – i.e. an overall reduction in interest income of around £350.[151] Since we do not know precisely how many loans are advanced each year, it is difficult to estimate how many loans and situations this could be applied to. However, if it is assumed that this may potentially apply to around 650,000 loans per year[152], this would imply a loss of interest income of around **£45 million per year**.[153]

309. An issue raised by industry respondents during the consultation was the potential difficulty of having to treat very small payments as partial early repayments. This would be costly and burdensome for lenders and may also not align with the intentions of the consumer – for example, some consumers regularly overpay by small amounts through rounding up, not intentionally exercising a right to repay early. However, as a result of implementation consumers will have to give notice of their intention to make early repayments, which should go some way towards addressing this issue.

Benefits

310. There may be a benefit to consumers, as they will have increased opportunities to reduce their levels of indebtedness and may be able to pay off their debts earlier than otherwise, through partial early repayment of outstanding debts. The monetary value of this benefit (in terms of reduced interest payments) would be equal to the lost interest income calculated above – i.e. **£45 million per year**.

Scope: There were mixed responses to consultation on the scope of this article – a few respondents felt that partial early repayment might be difficult to apply to pawnbroking and would have relatively limited consumer benefit, while others thought that pawnbroking should be included.

Overall, it was felt that consumers taking out pawnbroking agreements should have the same rights to partial early repayment as consumers taking out other types of agreements. Therefore, it was concluded that the proposed scope should be maintained; i.e. that the right to repay early should be applied to the following agreements covered by the Consumer Credit Act but outside the scope of the Directive – loans below €200, loans above €75,000, hire purchase and conditional sale agreements, pawnbroking, loans above £25,000 to small business and modifying agreements as outcomes of court settlement.

Admin burdens: In relation to this article, there is likely to be an increase to a burden under the Consumer Credit Act 1974, which is being extended to include partial early repayment.[154] If it is assumed that this would happen in every instance of early partial repayment, at a cost of £2 per notification, then this would create an additional admin burden of **£260,000 per year**.[155]

[151] **http://www.babylonbusinessfinance.com/dbimg/loan%20calculator.xls**
[152] Based on 4% of the UK's 25 million households applying for a personal loan, of which around two-thirds are rejected (source: 'Over-indebtedness in Britain: Second follow-up report)
[153] A saving of £350, multiplied by 20% of 650,000 loans (i.e. 130,000)
[154] ID 25658, with a value of £990,565
[155] £2 multiplied by 130,000 loans

Specific Impact Tests: Checklist

Use the table below to demonstrate how broadly you have considered the potential impacts of your policy options.

Ensure that the results of any tests that impact on the cost-benefit analysis are contained within the main evidence base; other results may be annexed.

Type of testing undertaken	***Results in Evidence Base?***	***Results annexed?***
Competition Assessment	No	Yes
Small Firms Impact Test	No	Yes
Legal Aid	No	No
Sustainable Development	No	No
Carbon Assessment	No	No
Other Environment	No	No
Health Impact Assessment	No	No
Race Equality	No	Yes
Disability Equality	No	Yes
Gender Equality	No	Yes
Human Rights	No	No
Rural Proofing	No	No

Annexes

Competition Assessment

Standardising information provision for consumer credit should facilitate comparison of credit products by consumers throughout the EU. This should broaden the choice available to consumers, which in turn should increase competition amongst credit providers. This could result in both lower prices and dynamic benefits through increased incentives for innovation.

Similarly, implementation of the Directive is likely to result in a reduction in the barriers to UK lenders providing cross-border credit, which should increase competition for EU-based consumers and may also result in increased profits for UK lenders.

Implementation of the Directive should not result in any limits on the potential commercial offering of consumer credit lenders; in some cases, it will introduce minimum values for certain aspects of credit agreements (e.g. a 14-day right of withdrawal), but this will not prevent lenders from offering superior terms (e.g. withdrawal periods beyond 14 days).

It is not possible to quantify the extent of this positive impact on competition, but implementation of the Directive is certainly not likely to result in any reduction in competition.

Small Firms Impact Test

It has not been possible to assess what proportion of UK consumer credit is accounted for by small and medium-sized firms. However, analysis for the Consumer Credit Legislative Reform Order in 2008 suggested that an approximation of the overall market structure for consumer credit was 14 large firm and roughly 150 small firms.

Without information on how cost structures vary for the different sizes of firm, it is difficult to say how the impact of implementing the Directive might differ according to the size of firm. On the one hand, it is likely that the costs associated with the provision of information requirements might be disproportionately higher for smaller firms, given that they would be expected to account for a lower level of activity related to consumer credit. However, on the other hand the cost impact may be not be so large for smaller firms, if trade associations produce a standardised form. In this way, economies of scale will mean that the costs to members of providing information can be mitigated.

Race, Disability, Gender Equality

After initial screening as to the potential impact of this policy/regulation on race, disability and gender equality, it has been decided that there will not be a major impact upon minority groups in terms of numbers affected or the seriousness of the likely impact, or both. Full analysis of the impact of the CCD on equalities groupings is attached in the Consumer Credit Directive: Equality Impact Assessment.

ANNEX A

Key policy justifications for going beyond scope in implementing the CCD	Credit agreements which are affected	Economic justifications
The UK already has detailed rules governing consumer credit, which are applied to a wider range of products and those caught by the Directive. Some of these rules will be subject to a degree of modification in line with the Directive's requirements. It wouldn't make sense only to modify the existing rules with regard to products within the scope of the Directive because we would then have different rules for products out of scope. This would require lenders to comply with two sets of (often similar) rules for different credit agreements within their loan portfolios. In order to retain the integrity of existing UK consumer credit legislation and avoid unnecessary complexity and duplication/dual regimes, we are (with some exceptions and a degree of flexibility) therefore applying the modifications required by the CCD to all credit agreements covered by the CCA.	**Article 2.2(c) – Scope:** **Issue:** Large loans >£60,260 are outside the scope of the Directive. (The UK CCA does not have an upper limit). Articles 4, 5, 9, 10, 11, 13, 16, 17 and 21 will apply in respect of larger loans. (The requirement in Article 10.2(i) to provide on request a copy of an amortisation table will not apply in respect of these loans).However, we are modifying existing provisions for high net worth individuals so that they can continue to be exempted in the case of loans > £60,260 and we are exempting loans over £100,000 from certain requirements 5*, 5.6, 10* and 14 - the requirement in Article 10.2(i) to provide on request a copy of an amortisation table will not apply in respect of these loans even if the creditor did decide to comply with the requirements as amended by the Directive. **Article 2.2(c) – Scope:** **Issue:** Small loans <£160 (also outside the scope of the Directive) Articles 4, 5, 9, 10, 11, 13, 14, 16, 17 and 21 will apply in respect of these smaller loans. (The UK CCA does not exempt smaller loans from regulation.) **Article 2 – Scope:** **Issue:** Business lending up to £25k -- the Directive does not cover any business lending, whereas UK CCA covers lending to Micro businesses/partnerships up to £25K because borrowers within this category are often no more informed than ordinary consumers and will often mix consumer and business borrowing. Articles 5*, 9, 10*, 11, 13, 14, 16, 17, 19, and 21 will apply in respect of business lending up to £25k (with the exception of the advertising requirements in Article 21 as existing UK	

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IMPLEMENTATION OF THE CONSUMER CREDIT DIRECTIVE

Equality Impact Assessment

MARCH 2010

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Introduction

The Consumer Credit Directive (2008/48/EC) (CCD) is a maximum harmonisation directive aimed at establishing a single market within the European Union for consumer credit. For the UK, this means transposing the requirements of the CCD into the Consumer Credit Act (CCA).

The CCD is designed to harmonise a number of core areas of consumer credit regulation n across the Member States. In doing so, it is recognised that such rules will ensure that consumers are sufficiently protected, including from becoming too indebted, or borrowing beyond their ability. For the UK credit legislation, the changes are limited. With the exception of the introduction of a few new consumer rights, the transposition will mostly only amend the UK regime to comply with the CCD. The new rights include an extension of the right to withdraw from a credit agreement within 14 days of completion; a right to make early partial repayments on a debt.

Additionally, the CCD places a duty on lenders to provide adequate explanations to the consumer about any credit product covered by the CCD, at the pre-contractual stage. The lender also has a duty to check the creditworthiness of the consumer wishing to enter into a credit agreement, before the agreement is signed.

Pre-contractual information will now need to be provided via the Standard European Consumer Credit Information form (SECCI) which will replace existing requirements concerning pre-contractual information under the CCA.

The consumer should therefore benefit largely from the implementation of the CCD, although they already enjoy many of the rights within it.

About the equality impact assessment

The Equality Duties place a legal obligation on public sector organisations to actively promote equality of opportunity in all that they do. This includes our policy development, our programme design and implementation and our service delivery.

The Department for Business, Innovation and Skills (BIS) is subject to the public sector duties for disability, race and gender equality. Equality impact assessments are an important mechanism for ensuring that we gather data to enable us to identify the positive and negative impacts that proposals may have on certain diversity groups[156]; to estimate whether such impacts disproportionately affect such groups, and if so, whether mitigating actions are needed to ameliorate the disparities.

In addition, we recognise the benefits of ensuring that all Government polices are formed so as to minimise the adverse impact on particular groups and therefore we aim to go beyond our statutory obligation and show, where possible, the same commitment for sexual orientation, religion and/or belief and age equality. In keeping with other initiatives in the development of new consumer credit regulations, we also want to include vulnerable consumers and low-income background to this assessment. Throughout this document, these groups are referred to as “equalities groupings”.

This equality impact assessment is designed to accompany the Statutory Instruments transposing the CCD as a separate report along side the economic impact assessment[157]. However, there exists some read across between these two analyses and they should therefore be considered together.

[156] Race, gender, disability, sexual orientation, religion or belief, and age: see the Consumer White Paper for more details (http://www.berr.gov.uk/whatwedo/consumers/consumer-white-paper/index.html)
[157] http://www.berr.gov.uk/consultations/page50814.html

Market context

UK consumers currently owe around £1.4 trillion to banks and other financial institutions. The vast majority of this borrowing is for mortgages on houses, in other words secured lending. However, in excess of £230 billion is unsecured borrowing, which includes personal loans, overdrafts, credit cards, store cards and some other forms of specialist lending.

Consumer indebtedness

Debt is now the number one advice issue in Citizen Advice Bureaux (CAB), accounting for one in three of all enquiries. A survey from the CAB in July 2008[158] found that more than half of their clients (58%) had no spare money to pay their debts and that those who did have spare money to pay their debts would take on average 93 years to repay them in full.

Data from a 2006 ONS study shows that certain groups of consumers are more at risk of struggling with debt than others. In particular, this is true of younger people; tenants, particularly those in social tenancy; low income households and single parents[159]. A 2008 CAB survey[160] further backs up these ONS statistics. This shows that the effects of debt are felt most strongly amongst some of the most vulnerable members of society. More than 20% of CAB debt clients were single parents, 12% came from ethnic minority backgrounds (compared to 7.9% of the UK population), 27% reported that they had a person with a disability or long term illness living in their households (compared to 18% of the UK population) and more than two thirds were renting their homes (compared with less than a third of the UK population). The 2008 CAB survey also showed that low income appears to be the most common cause of indebtedness identified by CAB clients whilst a significant number of people surveyed attributed their debt to the fact that they have taken on too many debts or have poor financial skills. Illness and disability was the third major reason for debt problems given by CAB clients.

There is also evidence linking problem debt to those people with mental disabilities. Recent research shows that debt is a much stronger risk factor for mental disorders than low income[161] and a recent survey by Mind[162] showed that over 90% of respondents said their debt or financial difficulties had made their mental health problem worse. Data from the ONS[163] shows that people with experience of mental distress often live on lower than average income – over 75% are reliant on welfare benefits.

As the Equality Impact Assessment to the Consumer White Paper set out[164], at risk households, such as those on very low incomes, are particularly susceptible to any small change in income or small increase in expenditure. They typically display low levels of financial literacy, poor or no credit histories and so are vulnerable to aggressive marketing by sub-prime lenders, who offer easily accessible finance at high interest rates. Typically, the level of credit that such low-income consumers require is short-term, low-value borrowing. However, an adverse change in circumstances, such as a fall in income or failure of a durable good, can expose the consumer to repayment difficulties or overuse of credit and lead to spiralling debt.

Limited access to mainstream credit

[158] www.citizensadvice.org.uk/a_**life_in_debt**_final.pdf
[159] ONS: The Demographics of Over-Indebtedness
[160] www.citizensadvice.org.uk/a_**life_in_debt**_final.pdf. It is worth noting that these results may be biased in favour of more vulnerable consumers who are most likely to use CAB services.
[161] Mental Capital and Wellbeing – Government Office for Science (2008)
[162] http://www.mind.org.uk/assets/0000/0102/In_the_red.pdf
[163] ONS, 2002
[164] Pages 7 and 8 (http://www.berr.gov.uk/whatwedo/consumers/consumer-white-paper/index.html)

It is estimated that at least 3.3 million people have a need and are willing to borrow but do not have ready access to credit from mainstream lenders[165]. 85% of them live in households where there is either no earned income at all or their only earnings are from occasional or part-time employment. About a third is also credit-impaired and would almost certainly find it difficult to access credit and arguably ought not to be borrowing commercially at all.

This last group includes people with a history of bad debt, who have a county court judgement, have set up an Individual Voluntary Arrangement with their creditors, have been made bankrupt or had a home repossessed or say that they have a serious adverse credit rating with the credit reference agencies. Almost all of the people who are credit impaired (around 1 million) do not have an income from full-time employment coming into their home.

Recent survey results[166] suggest that low income households make less use of, probably because they have less access to, mainstream products such as personal loans, overdrafts or student loans, which are used by 48% of low income households compared to 57% for the average household. By contrast, high cost credit products are more popular amongst low income households (7%) than the average (3%).

Consumers could be in a position to be exploited by lenders in relation to so-called high cost credit lenders, including those lending against personal goods secured by a bill of sale agreement. As a result of particularly difficult financial circumstances, consumers may be extremely limited in their choice of lender. This could give certain types of lender a very strong negotiating position, analogous to some sort of 'market power', in respect of these consumers, which they could then exploit to their advantage.

Equality impact assessment and the CCD

Building on screenings undertaken by associated projects in BIS' consumer credit agenda, the CCD is expected to introduce changes to the current UK consumer credit regime that will have only a minor positive equality impact. Following preliminary consultation with representatives from consumer groups[167], they did not believe that the CCD would have an adverse effect on equalities groupings.

Previous amendments to the UK credit regime have also shown that the regime itself does not establish a differential impact against equalities groupings. Improvements to the credit legislation have in later years focussed on transparency and awareness in the transaction process, with a growing emphasis on information requirements and responsible lending. However, BIS recognises that it is important to take account of situational factors, for example the relative understanding of a credit agreement by people whose first language is not English, or instances where the consumer suffers mental illness.

Impact of the CCD

Overall, the Directive will have a positive impact. There are two elements in particular in the new Directive that should result in a better understanding of credit products, and therefore more responsible borrowing, for all consumers including those in equality groupings: Article 5.6 (a duty placed on the lender to provide adequate explanations about a credit product) and the SECCI. These are designed to equip consumers with knowledge and information that will enable them to compare products and creditors, as well as assess their own affordability, before they enter into a credit contract.

[165] "Affordable Credit. The Way Forward" Sharon Collard and Elaine Kempson, report for the Joseph Rowntree Foundation, 2005
[166] YouGov Debt Tracker
[167] A general query was put to the Citizens Advice, Which?, and the Financial Ombudsman Service (who all have detailed knowledge of the CCD) in February 2009.

The format of these is expected to be adapted – in line with existing procedures – to the individual needs of minority group consumers. This includes making documents available where appropriate in Braille, alternative languages, audio, etc.

BIS strongly believes that these new features will significantly empower the consumer both to improve his/her understanding of the product and the consequences of failing to honour the credit agreement. It is therefore considered an element that will go a long way in terms of ironing out differential impacts.

Other new rights include a cooling down period in which the consumer will have a right to withdraw from the credit agreement within 14 days of it coming into effect. This right will be applied universally to any credit agreement regulated under the CCA without prejudice to any particular group. Similarly, a new right to repay parts of the debt early will be introduced.

A new duty to check the creditworthiness of consumers will also be imposed on lenders. It is intended that this duty will enable lenders to lend money more responsibly, taking individual circumstances into account. The assessment of a consumer's creditworthiness will be determined either by a consideration of the individual's own documentation, or by a reference check through a credit reference agency (CRA); or both.

Again, this requirement applies universally to all credit products that are regulated by the new law. However, it is ultimately down to the lender to determine whether or not to enter into a credit agreement with the customer. Additionally, BIS is looking at the current role of CRAs and access to the information they hold as part of the Consumer White Paper to promote more effective lending and borrowing decisions[168].

The implementing regulations otherwise largely amend existing provisions in the CCA to ensure appropriate transposition of the CCD.

Conclusion

This equality impact assessment complements other Government consumer credit initiatives proposed to the UK consumer credit regime, such as the Credit and Store Card review[169] (firm proposals expected in spring 2010), and the Office of Fair Trading's irresponsible lending guidance. The Government ensure that a thorough consideration of the various needs of equalities groupings will take place as part of the development of any new proposals.

[168] Page 42 (http://www.berr.gov.uk/whatwedo/consumers/consumer-white-paper/index.html)
[169] http://www.berr.gov.uk/whatwedo/consumers/consumer-finance/new_approach/uccc/page52784.html