

IMPORTANT - PLEASE NOTE

This document reflects the position prior to the 2010 changes implementing the Consumer Credit Directive (CCD), which come into force on 1 February 2011.

The document remains available for use in relation to advertisements for loans secured on land, to which the 2004 Regulations continue to apply. It may also have ongoing relevance to those aspects of the 2010 Regulations which are largely unchanged from the 2004 Regulations, for example the meaning of 'publication' and 'prominence' and the non-status, comparative and incentive triggers for a representative (typical) APR.

Guidance on the CCD changes can be found the [Department for Business, Innovation and Skills \(BIS\) website](#). The OFT will consider issuing supplementary guidance in the light of enforcement experience and responses to queries.

Office of Fair Trading
January 2011

Consumer Credit (Advertisements) Regulations 2004

Frequently asked questions

May 2009

OFT746

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INTRODUCTION

The Consumer Credit (Advertisements) Regulations 2004 (the Regulations)¹ came into force on 31 October 2004.

The Regulations were further amended by the Consumer Credit (Miscellaneous Amendments) Regulations 2004² with effect from 31 May 2005, and by the Consumer Credit (Advertisements) (Amendment) Regulations 2007³ with effect from 6 April 2008.

In addition, the Regulations were amended by the Consumer Protection from Unfair Trading Regulations 2008 (the CPRs)⁴ with effect from 26 May 2008. The CPRs removed the hire aspects of the Regulations, and also replaced section 46 of the Consumer Credit Act 1974 (CCA) which previously prohibited false or misleading advertisements.

The CPRs prohibit unfair commercial practices, including misleading actions or omissions.⁵ These may occur, for example, if an advertisement contains false information or is likely to deceive consumers in relation to specified matters, or if it omits or hides material information or provides such information in a manner which is unclear, unintelligible, ambiguous or untimely. The CPRs apply to both credit advertisements and hire advertisements.

The OFT and BERR have jointly produced separate guidance on the CPRs.⁶

Purpose of FAQs

The OFT has a duty under section 4 of the CCA to disseminate to the public information and advice relating to the CCA. A general guidance note *Credit*

¹ [SI 2004/1484](#)

² [SI 2004/2619](#)

³ [SI2007/0827](#)

⁴ [SI 2008/1227](#)

⁵ The CPRs apply to commercial practices by traders which affect or may affect consumers – business-to-business commercial practices are covered by the [Business Protection from Misleading Marketing Regulations 2008](#).

⁶ [Consumer protection from unfair trading](#)

advertising has been published in relation to the Regulations, and was updated in August 2008.⁷ An annexe to the guidance note contains sample advertisements and a flowchart illustrating the requirements.⁸

In addition, the OFT has produced more detailed guidance in the form of answers to frequently asked questions (FAQs). These complement the general guidance note. Initial FAQs were published in October 2004, and updated in September 2005, and this revised version takes account of issues arising since then – in particular, the implementation of the CPRs.

The purpose of the FAQs is to address the key questions which businesses may need to consider when ensuring compliance with the Regulations. The guidance represents the views of the OFT as an enforcer of the Regulations. It is not a determinative statement of the law and should not be relied upon as a substitute for legal advice. Only the courts can provide a definitive interpretation of the law. The guidance will however be taken into account by the OFT in considering possible enforcement action for breach of the Regulations.

Some advertisements for mortgages or other loans secured on land may be subject to dual regulation under the Regulations and the Financial Services and Markets Act 2000 (FSMA). If so, they will need to comply with the rules of the Financial Services Authority (FSA) as well as the Regulations. The OFT and FSA have jointly produced guidance⁹ to help firms identify when an advertisement may be dually regulated and to address some of the common issues that firms may encounter when creating a fully compliant advertisement.

The regulatory regime

The Regulations are made under sections 44 and 151 of the CCA. Section 44 requires regulations to be made as to the form and content of credit advertisements, with a view to ensuring that, having regard to its subject-matter and the amount of detail included in it, an advertisement conveys a fair and

⁷ [Credit advertising](#) (OFT016)

⁸ [Sample advertisements and flowchart: An Annexe to 'Credit advertising'](#) (OFT016a)

⁹ [Credit Advertising - A guide to dually-regulated advertisements](#)

reasonably comprehensive indication of the nature of credit facilities offered by the advertiser and their true cost to persons using them. Breach of such regulations is a criminal offence under section 167(2).

The Regulations extend to all forms of advertising, including in print, on television or radio, on the internet or by way of telephone canvassing. In particular:

- advertisements must be clear and use language which is not difficult to understand
- if an advertisement contains certain types of information about the credit on offer, other information must also be displayed
- key information such as the typical APR, where triggered, must be easily identifiable and placed with other important information.

Section 45 provides that if an advertisement indicates that the advertiser is willing to provide credit for the purchase of goods or services, but the supplier of those goods or services is not holding himself out as prepared to sell them for cash, the advertiser commits an offence.

Section 47 provides that, where an advertiser commits an offence against the Regulations or section 45, the offence is also committed by:

- the publisher of the advertisement
- any person who in the course of a business devised all or part of the advertisement, and
- any other person who arranged for its publication.

In the case of publishers, this is subject to the defence in section 47(2) where the person did not know and had no reason to suspect that publication would be an offence. A 'publisher' may include a newspaper or website owner.

Section 168 provides that, in any proceedings for an offence under the CCA, it is a defence for the person charged to prove:

- that his act or omission was due to a mistake, or reliance on information supplied to him, or an act or omission by another person, or an accident or some other cause beyond his control, and

- that he took all reasonable precautions and exercised all due diligence to avoid such an act or omission by himself or any person under his control.

Section 169 provides that where an offence is committed by a limited company or other body corporate, with the consent or connivance of (or because of neglect by) any director or manager or other officer, that individual also commits an offence.

Enforcement action

The OFT, Local Authority Trading Standards Services (TSS) and the Department of Enterprise, Trade and Investment in Northern Ireland (DETINI) can take enforcement action against any person who breaches the CCA or the Regulations. This may include prosecution in the courts, possibly leading to a fine and/or imprisonment.

In addition, breach may be actionable under Part 8 of the Enterprise Act 2002 (EA02). This gives certain enforcers power to seek court orders against businesses that infringe, or in certain circumstances are likely to infringe, specified legal obligations to consumers, where this harms or would harm the collective interests of consumers. The OFT, TSS and DETINI are 'general enforcers' and the OFT also has a co-ordinating role under Part 8.

A summary of the provisions of Part 8 EA02, and the OFT's general approach to enforcement, can be found in *Enforcement of consumer protection legislation: Guidance on Part 8 of the Enterprise Act*.¹⁰ We have also issued a general statement of our enforcement principles in relation to consumer protection legislation.¹¹

The OFT and other enforcers have information-gathering powers, and powers of entry and inspection, under the CCA. In addition, section 224 EA02 enables the OFT to seek information in appropriate cases to enable it to exercise, or to consider whether to exercise, powers under Part 8. Section 225 EA02 makes equivalent provision in relation to TSS and DETINI.

¹⁰ [Enforcement of consumer protection legislation: Guidance on Part 8 of the Enterprise Act](#) (OFT512)

¹¹ [Statement of consumer protection and enforcement principles](#) (OFT 964)

For example, the OFT or another enforcer can request information in order to establish whether a typical APR has been calculated correctly.

Breach of the CCA or Regulations may also be taken into account by the OFT in considering fitness to hold a consumer credit licence. Account may also be taken of unfair business practices in relation to the marketing of credit products, whether or not regulated under the CCA. A practice may be unfair or improper, whether unlawful or not.¹²

The FAQs also include suggestions for what the OFT regards as 'best practice' in relation to credit advertising. These are not legislative requirements but are intended to help compliance with the spirit as well as the letter of the law. Failure to comply would not lead to sanctions of any type where there is no breach of legislation and a practice is not unfair or improper.

The OFT's approach to enforcement

The OFT is committed to good enforcement policies and procedures in line with the recommendations of the Hampton Report¹³ as implemented by the Legislative and Regulatory Reform Act 2006¹⁴ (LRRRA). In addition, the use of enforcement sanctions is governed by the Regulatory Enforcement and Sanctions Act 2008.¹⁵

Part 2 of the LRRRA requires regulators to have regard to certain principles of good regulation, namely that regulatory activities should be carried out in a way which is transparent, accountable, proportionate and consistent, and should be targeted only at cases where action is needed. This has been elaborated through a Regulators' Compliance Code.¹⁶

¹² The OFT has published general guidance on fitness – see [Consumer credit licensing: General guidance for licensees and applicants on fitness and requirements](#) (OFT969)

¹³ [Reducing administrative burdens: effective inspection and enforcement](#)

¹⁴ [Legislative and Regulatory Reform Act 2006](#)

¹⁵ [Regulatory Enforcement and Sanctions Act 2008](#)

¹⁶ [Regulators' Compliance Code: Statutory Code of Practice for Regulators](#)

